would like to qualify that, because I had other things.

Q. All right. (Continuing)—that that became the property of Certain-teed; isn't that right? A. Yes.

Q. And you had to disclose to them anything that you had in that line? A. Yes.

Q. And you were working for the company under
6198 that contract? A. Just a certain portion of my time, and it specified the major portion.

Q. The major portion of your time in relation to these products? A. Yes.

Q. And from time to time, you took up these matters with Certain-teed's counsel, with respect to those inventions, didn't you? A. Yes, sir.

Q. And your conversations and dealings with them were in the interest of Certain-teed, weren't they? A. Yes, sir.

Q. And Certain-teed's counsel were considering these various inventions from any number of various point of view, weren't they? A. Yes, sir.

Q. In respect of Certain-teed's legal position, isn't that right? A. Yes, sir.

Q. So that you would take the matters up with them so that they could act upon them in their capacity as lawyers for Certain-teed; isn't that right? A. Yes, sir.

Q. And if Certain-teed happened to use one of these inventions, you might later benefit, is that correct?
6199 A. That is correct.

Q. But the purpose of your consultation with Certain-teed's counsel was so that Certain-teed's counsel could act with reference to these matters in a legal way; isn't that right? A. Yes.

Q. And when you were taking these matters up with Certain-teed's lawyers, you were going to see them as an employee of Certain-teed under that contract, weren't you? A. Yes, sir.

Q. And in accordance with your duties, as you understood them? A. Yes, sir.

Q. And they were paying their lawyers, weren't they? A. Yes, so far as I know. (Laughter).

Justice Stephens: That is a very conservative answer, Mr. Speer.

By Mr. Adams:

Q. Mr. Speer, you embarrass me. A. Well, they wouldn't work for the company unless they got paid.

Mr. Adams: That is all.

Justice Stephens: Mr. Bromley, you objected to this exhibit on the ground that it hadn't been connected. I think it was you who raised the question of the
6200 connection of this exhibit with Certain-teed, even if it was said not to be privileged or if the privilege was said to be waived. Do you wish to examine this witness, or contribute any illumination to this subject?

Mr. Bromley: You mean do I wish to examine him as to Exhibit 644, the contract?

Justice Stephens: No, when I mentioned an exhibit, I meant Exhibit 233—I meant on the subject of his testimony this morning with respect to these alleged privileged conversations, which are relied upon by the Government to connect 233 with Certain-teed.

Mr. Bromley: I have nothing further on this preliminary question. If all this stays in, then I do have some cross. (Laughter).

Justice Jackson: Are you through?

Mr. Steffen: I think Mr. Adams has done a very good job of showing that Mr. Speer was consulting these lawyers in his capacity as an agent or employee of Certain-teed, and that therefore he was very definitely authorized to act for Certain-teed, not limited, necessarily, as his testimony shows, to technical questions, but very broadly, as the contract shows, to promote products.

And, Mr. Speer, in promoting new products, was it limited to technical questions of patent law?

Mr. Adams: I submit that that would be im-
6201 material, Your Honor. Patent law is just as valid as any other part of the law.

Justice Stephens: Objection overruled.

By Mr. Steffen:

Q. Were you limited, in your duties, to discussing questions of patent law? A. No.

Q. Will you tell us what the scope of the duties of a promoter of a new product may be?

Mr. Bromley: I object to that as speculative.

By Mr. Steffen:

Q. What were your duties, as a promoter of new products?

Mr. Bromley: We have the contract in evidence, and I object on the ground that the contract is the best evidence.

Mr. Steffen: I will ask him what he did. An agency

contract is simply general authority. It is not a limitation on what he may or does do.

Justice Stephens: I think he may go into it. It has been gone into pretty fully already, but if you think it is necessary to go further into what he actually did, Mr. Steffen, you may do so. We went into the contract for the purpose of determining his authority to consult lawyers, as far as we could.

Mr. Steffen: I will defer the matter.

Justice Stephens: I told you you might ask the question.

6202 By Mr. Steffen:

Q. Could you tell us the scope of the duties and the things that you did as a promoter of new products for Certain-teed? A. I did experimental work, either myself or delegated it to somebody else, and saw that the work was perfected, and also saw to it that the process of manufacturing was the correct one.

Q. Did you consult as respects sales? A. Yes, sales—naturally, you have to be Jack-of-all-trades when you promote a new article.

Q. And with the company, who did you consult concerning the sales qualities of a new article? A. I talked to Mr. Whittemore and Roos—

Q. (Interposing) Who was Roos? A. He was an assistant general sales manager.

Q. And did you consider the advertising possibilities of a new product? A. Yes, sir; some times I got up the advertising myself.

Q. Now I want to ask you a question in regard to Mr. Chaffee. Did you have any talks with him on matters beyond law? Was he an inventor? A. He was.

Q. And did he ever discuss with you, ideas con-
6203 cerning products? A. He did.

Q. Now in regard to Mr. Redfield, I think you have testified that his offices were with the Certain-teed company, is that not correct? A. So far as I know, because I always saw him at Certain-teed.

Q. And how did he communicate with you, on what forms?

Mr. Bromley: Didn't this witness testify this morning that Redfield had an office with Chaffee?

Mr. Steffen: Let's get that clear. I don't think he did.

By Mr. Steffen:

Q. Where was Mr. Redfield's office? A. I always saw him, as I recall it, at Certain-teed.

Q. And that was at 100 East 42nd Street? A. Yes, sir, the same place as Mr. Chaffee's office.

Q. The same building, you mean? A. Yes, sir, the same building.

Q. And on what forms did Mr. Redfield communicate with you, if you know? A. On Certain-teed's stationery.

6204 Q. He used Certain-teed's stationery? A. Yes.

Q. I show you Government's Exhibit 233, and ask if that is what you mean by "Certain-teed's stationery", or "Certain-teed's form"?

(Government's Exhibit 233 was handed to the witness.)

A. Of course, this is a copy, it is not the original.

Q. Merely as to the form?

Mr. Adams: I don't see the materiality of this, Your Honor. It wouldn't make any difference how counsel communicated with anyone else. He was still associated with Mr. Chaffee, and that is Mr. Redfield's own testimony in this case.

Mr. Steffen: I want to bring out, Your Honor, what I stated orally, and that is that patent counsel may be members of the bar, but they also have a business quality; and in this case Mr. Redfield, as Mr. Speer testifies, had his offices with Certain-teed rather than with Chaffee, who had his general offices in the same building. He communicated with Mr. Speer using the ordinary forms—

Justice Stephens: (Interposing) You may ask the question.

By Mr. Steffen:

Q. Exhibit No. 233 is such a form?

Justice Jackson: You have asked him if that is

6205 such a form?

Mr. Steffen: Yes.

By Mr. Steffen:

Q. I want to show you, to refresh your recollection, what purports to be a memorandum from Mr. Redfield to you under date of January 10, 1929, which I ask be marked Government's Exhibit 645 for Identification.

(The document referred to was marked as Government's Exhibit No. 645 for Identification.)

By Mr. Steffen:

Q. Do you recognize that as the type and form upon which you received communications from Mr. Redfield? A. Yes, I do. This is it.

Q. That is the type of form? A. Yes.

Q. And is that the same type of form as appears on Government's Exhibit 233? A. Well, this is just a copy, they wouldn't send it like this, but they would also send it on this stationery.

Mr. Steffen: I think I have no further questions, Your Honor, on this level.

Justice Stephens: Mr. Adams, do you have something further?

Mr. Adams: Yes.

6206 By Mr. Adams:

Q. Mr. Speer, when you did these various things on the matters that you were working on, that Mr. Steffen asked you about, you also took up the legal phases with the counsel for the company, didn't you? A. To what extent?

Q. You talked with Mr. Roos or somebody else, perhaps, about the sales possibilities, or something like that, but when you came to the legal phases of it, you took those matters up with Mr. Chaffee and Mr. Redfield, didn't you? A. That is correct.

Q. And you took those matters up with them in their capacity as the counsel for the company, isn't that right? A. Well, I don't know whether I should define it the same way—

Q. (Interposing) It was dealing with legal matters, wasn't it? A. Yes, sir.

Justice Jackson: I am a little bit uncertain yet. All of Mr. Adams questions have been general as to what you generally did. Now with respect to the conversations that you related this morning to Mr. Steffen, wherein you said you spoke to Mr. Whittemore and Mr. Chaffee and others, did you go into those conferences for the purpose of securing legal advice on behalf of Certain-teed, from

6207 Chaffee or Mr. Redfield?

The Witness: I did.

Justice Jackson: You did?

The Witness: I did, yes.

Mr. Adams: I have nothing further.

Justice Stephens: Well, if there is nothing further, we are ready to rule.

It seems to us clear that these conversations with Redfield and Chaffee were privileged, and the motions to strike must be granted, and they are granted.

Mr. Steffen: May I ask, Your Honor, does that apply to all of the conversations? I will take the very first one, if I may be heard for a moment, the one concerning the conversation at which Mr. Chaffee and Mr. Whittemore were present; and the only conversation that was had, irrespective of what the purposes might have been, the only conversation that we offered there at all was that Mr. Speer recommended to Mr. Whittemore that they bring out a closed-edge board of the type that he was manufacturing. Now that certainly is not privileged at that point, that is a conversation between Mr. Speer and Mr. Whittemore.

Justice Stephens: There isn't any motion to strike out the Whittemore conversation, as I understand it. As I understand it, there is a motion to strike out the conversations at which Chaffee and Redfield were present.

6208 Mr. Steffen: Only these latter conversations in May or June, then?

Justice Stephens: We are striking out all of the testimony of this witness directed to his conversations with either Chaffee or Redfield. He has testified that Whittemore and others dropped in, from time to time, but nevertheless he has clearly answered both Judge Jackson and myself, on specific questions, and the more general questions of Mr. Adams, that when he talked with Chaffee and Redfield he was there to get legal advice for Certain-teed.

Now if there is a conversation in the record, a separate conversation with Whittemore, about his desiring to have a product promoted, of course Whittemore isn't a lawyer and that conversation can stay in.

Mr. Adams: I did not understand that there was any such conversation. There I am only relying on my recollection of the record. My notes indicate that he talked with them, Mr. Chaffee and Mr. Whittemore,—that Mr. Chaffee was present.

Justice Stephens: Well, the record is there; and the Court will make the ruling, reiterate it, that all testimony of this witness as to conversations between himself and Mr. Chaffee, and himself and Mr. Redfield, are privileged and are therefore stricken out. If there is any evidence in

the record of a separate conversation with Mr. Whit-
6209 temore, on the subject just described by Government counsel, that is not stricken out.

Mr. Steffen: May I make a point concerning that?

Justice Stephens: Yes.

6210 Mr. Steffen: As I understand it, if Mr. Redfield were here, and we had him identify his memorandum, Exhibit No. 233, and he then testified that he had a conversation with Mr. Dowd, and your Honors would rule that prima facie that constituted a waiver of any attorney-client privilege, it would then be open to us, as I understand it, to ask Mr. Redfield anything at all about the way he put that memorandum together.

I don't see how it can be avoided, because if you were going to say that the memorandum was waived by the waiver that he testified to, you have to allow the writer to talk about it, and Mr. Redfield, therefore, would be able to talk and state just what information he had, and what he acted upon when he wrote that memorandum.

Therefore, his conversations would certainly not be privileged.

Now, I have asked for the other end of the conversations. I have now got Mr. Speer saying that he talked with Mr. Redfield. Now I don't care in what capacity he talked with Mr. Redfield. I think it is all the better that he talked with him as an employee of Certain-teed, rather than as just some independent promoter.

He was an interested party in the sense that he got some percentage himself. But three-quarters of his interest was as a representative of Certain-teed.

6211 Now it seems to me that if we are to be permitted at all to connect Exhibit No. 233, and to show that it is something more than just a piece of paper that Mr. Redfield wrote, and Mr. Redfield could talk and tell us, and tell the Court that he wrote that, not because he was simply a patent counsel, but because he, as most of these people, had additional duties, and additional understandings as to what he was to do. He was employed in a sense as a patent counsel, but he was also employed or had offices in Certain-teed's plant. He handled a large number of things concerning promotions, he wrote a memorandum in which he said the various things set out in Exhibit 233.

Now it seems to me that Exhibit 233, if there is no attorney-client privilege with respect to it, then the writer could testify, and the person could testify as to conversa-

tions he had with people in the company. You have to tie it in with Certain-teed, and Mr. Adams has shown that Mr. Speer was in the company, and that he saw Mr. Redfield as a member of Certain-teed—tying it right up with Certain-teed.

Now we say simply that the conversations upon which Mr. Redfield acted, when he wrote the memorandum, are not privileged, because of the fact that Mr. Dowd, according to Mr. Redfield's testimony, has waived the privilege.

Accordingly, it seems to me that Mr. Adams has
6212 beautifully connected up the fact of the writing of Exhibit 233 and the fact that it emanated from people connected with Certain-teed, Mr. Speer and the other people that talked with Mr. Redfield when he wrote the memorandum.

And if, as I say, Mr. Redfield is to be allowed to talk concerning how and why and when he wrote that memorandum, the people that talked to him are equally allowed to talk.

Justice Stephens: I wish, Mr. Steffen, that you would make these arguments before the Court rules, instead of afterwards.

Mr. Steffen: I am awfully sorry, your Honor.

Justice Stephens: I am not scolding you, but we need the benefit of all that counsel has in his mind before we rule, and we need to have the opportunity of hearing everything applying to a question before we rule.

I thought I gave you a full opportunity to say everything you wanted to, but you wait until we have ruled adversely, and then make a new speech, and then we have to reopen the thing for the lawyers on the other side.

Mr. Steffen: I am following Mr. Adams' technique.

Justice Stephens: I don't approve of it, no matter whose technique it is.

Please get these matters over with once and for all, if possible.

Mr. Adams, do you want to reply?

6213 Mr. Adams: It seems to me that that argument is founded on any number of false assumptions. The simple question here is whether this witness went to counsel to get legal advice. That was the question which Judge Jackson asked him, and which I asked him. Everything that he talked to them about concerned matters of legal advice.

Mr. Steffen pulls right out of the air something and says that that connects him or Redfield with this memo-

randum. It doesn't do anything of the kind, it doesn't even come close to it.

Justice Jackson: I think possibly that this is a trifle untimely, because the situation couldn't arise, Mr. Steffen, until after we had decided whether or not the privilege was waived with respect to Exhibit 233. Then, in that event, you can make this argument, can't you?

Justice Stephens: I explained that, Mr. Steffen, when I came along on the bench this afternoon. It seems to me the answer to your present contention is that we haven't yet ruled that this exhibit is admissible. We have ruled that, on its face, it is a privileged communication. We have ruled that a voir dire prima facie showing has been made by the Government under the Redfield testimony that the privilege was waived, but we have said that we cannot decide that voir dire question bearing upon the admissibility of the document as a privileged, but privilege-waived document, until we have heard Mr. Dowd.

6214 Now, you had an opportunity to hear Dowd yesterday, but decided that you didn't wish to do so. You are now engaged in an undertaking to connect the Redfield document with Certain-teed before we have ruled whether or not it is admissible.

That being true, I don't think you have reached the question you have argued yet.

I still think you have to meet the question, which I also commented upon when I came on the bench this afternoon of waiver of privilege with respect to a particular document, perhaps including a waiver of the very conversations out of which that document grew, I don't think it includes the waiver of every other conversation had with the witness on the general subject involved.

It seems to me your argument is premature. We haven't yet ruled that the privilege on this document has been waived, because we haven't yet heard Dowd. We are simply giving you an opportunity now, out of order, to try and connect the Redfield document with Certain-teed.

Mr. Steffen: May I say just a word?

Justice Stephens: Yes.

Mr. Steffen: My understanding is, so far as Mr. Dowd is concerned, that that goes to the question of whether or not there was a waiver of the privilege.

Justice Stephens: That is right.

6215 Mr. Steffen: I understand that, prima facie at least, Mr. Redfield's testimony that he did have

such a conversation would constitute a waiver. I had understood your Honor's ruling, but I will simply state that I had laid that to one side, and had started with the assumption that inasmuch as we had Mr. Redfield's testimony concerning the waiver, and that, on its face, constituted a waiver, as your Honors I think stated, subject, of course—

Justice Stephens: (Interposing) All I ruled was—and I took careful pains to write out the ruling, and I re-read it today, and I put emphasis on it—that it only constituted a prima facie voir dire showing, not a final showing on voir dire.

6216 Mr. Steffen: Well, my thought was, as I say—laying that question of the waiver of privilege to one side—that what we were doing with Mr. Speer was to connect the writing which Mr. Redfield made, Exhibit 233, with the Certain-teed Company, to show that it was an authorized transaction.

I thought I could do that entirely apart from this question of what Mr. Dowd might say, one way or the other, and I thought that that was probably a preliminary matter in order to determine whether it was important to go on with Mr. Dowd. We got into that discussion yesterday, and it has been pro and con. In any event, I asked—and the Court agreed with me yesterday—that we go into this matter before we took up Mr. Dowd, and this matter is a matter of connection.

Now it seems to me that if we can assume for a moment that Mr. Dowd's testimony would not be sufficient, so that the waiver would be effective as to Exhibit 233—let's assume that for the moment—then this connection must be brought in as though there had been a waiver of the attorney-client privilege; and in such event, as your Honors state, the conversations leading directly to the writing of that agreement and connecting it directly with Certain-teed, would be equally within the waiver of privilege.

Now if we allow Mr. Adams at this moment to strike those conversations from the record permanently, then we haven't anything to go forward at all with, when Mr. Dowd comes on.

6217 Justice Jackson: You have Redfield, haven't you?

Mr. Steffen: Why could we not take this position? Why not suspend ruling on this motion to strike until we do hear from Mr. Dowd, if necessary?

Mr. Bromley: There is no connection between the two things that I can see.

Mr. Steffen: That goes to the issue I thought we were arguing.

Justice Jackson: All Dowd is going to testify to is as to whether or not such a telephone conversation took place?

Mr. Steffen: Yes.

Mr. Adams: As I advised the Government yesterday, and the Government had an opportunity yesterday to interview Mr. Dowd, he told them that he would testify that he never had any such conversation with Redfield, or with any representative of the Government. That is why I wanted to put him on yesterday because it would only have taken five minutes to do the whole job. Mr. Dowd told the Government that he knows absolutely nothing else about this whole matter.

Justice Stephens: Of course these rulings on motions to strike do not tear anything physically out of the record; it is still there and if the disposition of this matter turns differently, after we hear Dowd, and you still want to contend that this matter is properly before the Court, you may move to reinstate it. We are not going to
6218 prejudice you that way by any technical ruling.

I am afraid I still haven't been able to make clear to you—perhaps I am clumsy in my way of expressing rulings—that we haven't yet made any ruling that Exhibit 233 is a privileged document as to which the privilege has been waived.

I will go back to the simple illustration of a dying declaration. If the Government, in a criminal case, where the identity of the assailant was the only issue, in a murder case, put on a dying declaration, it must prove two things to get it into evidence: First, that it was uttered by a person in extremis; and second, that that person was consciously in fear of death.

If the Government puts that on, that doesn't let the exhibit in evidence; we still have to hear the evidence of the defendant to the contrary of that if he wants to offer any. We have to hear that before the court rules as to the admissibility of the declaration.

The same thing is true here. You put on Mr. Redfield to establish a waiver with respect to Exhibit 233, and Redfield testified to facts which, we think, if true, would constitute a waiver. But we haven't ruled that the privilege has been waived. All we have ruled is that the Government has

made, on its side of that voir dire hearing, a showing prima facie that it was waived. But we have still got to hear Dowd so that we can have all the evidence, on that preliminary question of fact bearing upon the admissibility of this exhibit, before us, before we decide whether or not it is admissible in the sense of being a privileged document in respect of which the privilege has been waived.

We still, then, have a second question as to whether it was the act of Certain-teed, rather than the mere act of Redfield. That is the inquiry into which we have been going now.

Now to prove that it was the act of Certain-teed you have to prove it by competent evidence, not by evidence which is privileged and therefore excludable. If you wanted to examine Dowd first, if you had wanted to examine Dowd first, you might, perhaps, have gotten to the position where you could argue what you are now arguing, and we will give you an opportunity still to argue it if you want to get Dowd back here and go into this matter.

It does seem to all of us that an extraordinary amount of time is being taken over this one little exhibit which, after all, when you read it, is merely the expression of a view on the part of one man as to how the Speer patent might have been used, either for trading purposes or to bolster up an alleged price-fixing system. We have spent—I spent during one recess two or three days, and my clerk a good deal more, in looking up the law on this subject and writing a memorandum, and we have had a week's time in Court about it. Is it really that important?

Mr. Steffen: It has become a sort of issue, your Honor, and it is very difficult to drop it on either side. I think it is important. It is one item in favor of the Government.

Justice Stephens: We don't want to foreclose you from exercising all necessary zeal in the promotion of your case.

Mr. Steffen: I will agree that it has taken a lot of time.

Mr. Adams: I will be glad to agree, if the Government wants to withdraw it.

Justice Stephens: We will let the rulings thus far made, stand, with the understanding that if we go any further with this inquiry, if Dowd is to be produced, and you wish to make a further contention that these conversations with Redfield and Chaffee are to be or ought to be considered by the Court on the connection question, we will hear you. We want to be fair and open on the matter.

Do you need this witness any further?

Mr. Steffen: He hasn't been examined by Mr. Bromley.

Justice Stephens: Do you wish to examine him further?

Mr. Bromley: Yes, your Honor.

Cross Examination

By Mr. Bromley:

Q. May Exhibit 641 be handed to the witness?

(Government Exhibit 641 was handed to the witness.)

Justice Stephens: The Court ought to have made
6221 clear, of course, that it is not striking out of the record the testimony of this witness as to the nature and asserted usefulness of this Speer patented board, on the issue of subterfuge. That is in the record and I assume that is what you are cross-examining about now, isn't it, Mr. Bromley?

Mr. Bromley: Yes, your Honor.

Mr. Steffen: May I make just one point, and that is that I would like to have an opportunity to be heard on the McAfee case at some time, which I think goes to the basis of your Honor's ruling in the first instance on the matter of privilege, on the examination on voir dire.

Justice Stephens: I will be glad to hear you. I wrote it and I ought to know something about it, but if you feel you can tell me something more, I will be glad to hear it. The McAfee case I don't think supports your contention.

That case, of course, involved a peculiar local offshoot of the preliminary question of fact rule. There is a rule with respect to confessions in this jurisdiction, and in some other jurisdictions, that despite the fact that the judge in a criminal trial, with a jury, must pass upon the preliminary question of the voluntariness of the confession, and if he rules adversely, that is the end of it, nevertheless, if he does not rule adversely but rules that there is some evidence which indicates that the confession is voluntary, he must re-submit that to the jury.

6222 But that is a very peculiar rule in relation to confessions, and my original memorandum—which I should be glad to submit to counsel if they wish to see it—which I submitted to my fellow judges on the question of Exhibit 233, goes very thoroughly into the question of this preliminary determination by judges of questions of fact which are incidental or prerequisite to the admissibility of evidence.

I don't think there is any substantial authority to the effect that that preliminary question must not be determined in non-jury cases finally and absolutely by the judges, before the evidence is admitted.

I even went so far, because I am an Appellate Court judge rather than a Trial Court judge, usually, to consult one of the experienced judges in this jurisdiction as to the practice here, and the practice I am following in this situation is exactly the practice which is followed in this jurisdiction in trials, both civil and criminal, with respect to preliminary questions of fact. I don't think the McAfee case varies that at all.

Mr. Steffen: May I refer to your Honor's language at page 24 of the McAfee case?

Justice Stephens: Yes.

Mr. Steffen: It says: "It is asserted by the defendants under the evidence that the written confession was so clearly not voluntary that it was the duty of the Trial
6223 Judge to exclude it. Under the law and practice in this jurisdiction the duty of a trial judge in respect of an offered confession is, first, on voir dire to determine whether or not there is evidence upon which the confession might be held to be voluntary. If he concludes there is no such evidence, then he must exclude the confession from the case. But if, in his view, there is evidence from which it might be held to be voluntary, he must admit it in evidence and submit it to the jury under proper instructions."

Now our contention, as applied to this case, is that that is strong authority. We have put on evidence, we have put on Mr. Redfield's testimony that there was a waiver, and using your Honor's language, if there is evidence from which it might be found that there was a waiver, then the court is dutybound to submit the question to the jury, or in this case to the Court, upon a final hearing, after the defendants, of course, have had their opportunity.

It seems to me, therefore, that even though Mr. Dowd is called, that the real question is—was there any evidence, as you state there, from which a court might find that there was a waiver? And if there was evidence, then that is the end of it so far as the matter of getting the item in evidence is concerned; and it is then for the defendant at the proper time to put in countervailing evidence, if he has it.

Justice Stephens: You are now rearguing a mat-
6224 ter on which we spent several days and ruled finally. That case does not mean that, Mr. Steffen.

The practice in this jurisdiction, both before and since the McAfee case, is clearly this: When a confession is offered in evidence the Government puts on witnesses to try to prove that it was voluntary, that it was not made under threats or promises or duress or force of any sort. But before the court rules on the question of whether or not that can go to the jury, it also hears from the defendant on voir dire on that subject, in the absence of the jury. And having heard both sides, it then rules whether or not there is evidence which ought to be submitted to the jury on the subject.

If it finds that it is not voluntary, in the view of the court, it doesn't submit it to the jury at all. If it finds that there is some evidence that the jury ought to consider, that it is voluntary, it submits both sides of that again to the jury, it is repeated in the presence of the jury.

I don't see how I can make it any clearer than I have.

Justice Jackson: I might tell you, Mr. Steffen, that the only reason that I agree with such a ruling is that I understand that it is the practice in this jurisdiction; it is contrary to any practice I have ever had in other jurisdictions.

Justice Stephens: I can show you authority in Wigmore, Mr. Steffen, and authority in the Federal cases.

We will take the afternoon recess.

6225 (Whereupon a five minute recess was taken, after which the trial was resumed as follows:)

6226 Justice Stephens: Proceed, Mr. Bromley.

By Mr. Bromley:

Q. Annexed to the sample, which is Government's Exhibit No. 641, is some advertising material, isn't there, Mr. Speer? A. Yes sir.

Q. Did you put that on there? A. I did, yes, just for a wrapper. It was a wrapper and also signified that this was the Bestwall Edge.

Q. That descriptive matter describes the edge of which Exhibit No. 641 is a sample, does it? A. It doesn't describe it, because this advertisement wasn't made for this particular edge. This is just a wrapper to show the sample.

Mr. Bromley: May I see the exhibit, please?

(Government's Exhibit No. 641 was handed to Mr. Bromley by the Marshal.)

By Mr. Bromley:

Q. Then do you say that all these pictures and all this printing that forms a part of this exhibit has no relationship to the sample at all? A. I would say that it has not.

Q. That it has not? A. It has not.

Q. In other words, you just picked it up as a scrap of paper to wrap this little thing up in, did you?

6227 A. Well, it is simply to show it. That is the way we were showing samples, and it is a similar product, except that it is an improved product, and we just used the wrapper. It was there and we used it for convenience.

Q. When did you put it on, for the purpose of this case, or for the purpose of something else? A. A long time ago, I imagine it was about ten or twelve years ago, maybe more.

Q. I notice that this paper bears a date. Did you know that? A. Well, it must have been around 1930 or 1931, I should say.

Q. Would it surprise you to know that the paper is dated in 1923? A. Well, I don't think it would make any difference.

Q. No. A. No.

Q. Well, then, this descriptive matter of the Bestwall Edge is descriptive matter which described the type of edge the Beaver Company was making at some time prior to 1923, isn't that right? A. That is correct.

Q. And that edge, described in this piece of paper, is similar to the edge in the little sample, isn't it? A. I would say so, except it has some new features.

6228 Q. But so far as the folding of the paper is concerned, the Bestwall Edge described in the paper wrapper is substantially similar to the way you folded the paper in the little sample, isn't it? A. Yes, it is similar, but not the same.

Q. I say, it is similar. A. Yes.

Q. And it is quite similar, isn't it? A. I don't know.

Q. Well, there is a picture of the way the paper is folded in the Bestwall Edge described in this advertising, or descriptive material attached to Exhibit 641, is there not? A. Yes.

Q. And that picture is the one in a circle which appears at the top of the inside of the advertising matter? A. That is correct.

Q. And if one looks at that picture, that will show the way the paper was folded in the Bestwall board, won't it? A. Exactly.

Q. And then, by looking at the sample, one can judge whether the Bestwall type of folded edge was or was not similar or identical to this little sample, isn't that right? A. Yes, that is right.

Q. Now you knew, didn't you, that this type of edge described in this piece of paper, which you called the
6229 Bestwall Edge, was adjudicated by a Federal Court to be an infringement of USG's Utzman Patent? A. Yes, I did know about it.

Q. And the Court handed down that decision in 1925—do you remember that? A. Well, I don't know about the date.

Q. Don't you remember that the Beaver Company was enjoined by USG from making this type of edge? A Yes, I do.

Q. And don't you remember that the Beaver Company then took a license and agreed to pay a large sum of money to USG as damages for its infringement? A. I know all about it.

Q. And then, when you went with the Certain-teed Company, Certain-teed was making open-edge board, wasn't it? A. Well, no, not at that time, a little later, I think, after United States Gypsum won, I think in the first court—I don't know what date it was. But I came there in December, 1919, with Beaver Board, and then they were still making the Bestwall Edge. I don't think you had any decision yet.

Q. No, that is right, we didn't get our decision, as I thought you told me a minute ago, 1925. That is right, isn't it? A. Well, I couldn't remember the date, but I think you are correct about that.

6230 Q. Well, don't you remember, as a matter of fact, that the lower court's decision enjoining this Bestwall Edge, was back in 1921 or 1922? A. I know that Bestwall lost the case. I wasn't in the plasterboard department, but I happened to know it.

Q. You knew that Bestwall lost the case sometime in the 1920's, didn't you? A. Yes, sir.

Q. Now, after you went into the employment of the Certain-teed Company, didn't you find out that Certain-teed was making an open-edge board? A. Well, I really don't remember whether it was just at that time, or a little previous.

Q. I am talking now about 1928, Mr. Speer. Do you un-

derstand that? A. I think you are correct about it, as I think about it.

Q. Well, at the time you first started to work for Certain-teed, it was making an open-edge board, was it not? A. I don't know what Certain-teed was making then. I was interested in the Beaver Products then. That was a new company, Beaver Products.

Q. Weren't you working for the Certain-teed Company? A. No, I was working for the Beaver Products, not for Certain-teed.

6231 Q. When did you start to work for Certain-teed? A. When they took over the old Beaver Products Company.

Q. That was in 1928, wasn't it? A. That is correct.

Q. Now, I say, as of that time, don't you know that Certain-teed was making an open-edge board? A. Well, I think they were, that is all I can say, that I think they were, just now. I can't remember exactly at what time, but my impression is that they did make an open-edge board, and also I know for sure that they did make an open-edge board at some time, but I couldn't tell you the exact year.

Q. When you told us that you said to Mr. Whittemore, or to some other official or officials of Certain-teed, that this closed-edge board of yours was better than anything that Certain-teed had, you meant, didn't you, that it was better because Certain-teed was making an open-edge board, and that this was a better product? A. No, I meant that I considered—it was my personal opinion—that this new edge was superior even to the Utzman edge. I am not talking about open-edge. Anybody could see that any of the closed edges were superior to the open-edge.

Q. By the way, you knew that at this very time, when you first started to work for Certain-teed, that Certain-teed had a lawsuit against it, brought by USG?

6232 A. Yes sir.

Q. Is this Exhibit 641 representative of a closed-edge type of board? A. Yes sir.

Q. Well, now, it is partially open, isn't it? A. Well, I don't know. This is just one of the samples. There are all varieties, probably 10 different varieties, that you can make with those edges. I just happened to find that one a short time ago.

Q. Just direct your attention to Exhibit 641. That is clearly a semi-open-edge board, isn't it? A. Well, I don't know.

(Government's Exhibit 641 was handed to the witness.)

The Witness: In this sample it is a semi-open-edge board, the way it is made.

By Mr. Bromley:

Q. In other words, in this sample, the plaster core is exposed for a distance near the edge of perhaps a quarter of an inch, wouldn't you say? A. Yes.

Q. And where I have put those two little pencil marks, the material on the face of the board, near the edge, is plaster, and not paper, isn't it? A. Yes sir.

6233 Mr. Bromley: I would like to show that to the Court, if I may. It can be seen this way (indicating). The paper stops there and goes down, and this paper comes up here and stops here, and this is exposed plaster, and all across here is exposed plaster (indicating).

(Exhibit No. 641 was handed up for the examination of the Court and then returned to Mr. Bromley.)

By Mr. Bromley:

Q. When the Bestwall Company was enjoined, it went to the manufacture of an open-edge board, didn't it? A. Well, I couldn't say positively whether the Bestwall Company went to open-edge. Yes, thinking it over, it did go to open-edge, and I recall the shape of it, too.

Mr. Bromley: That is all.

Justice Stephens: Is there any further cross-examination by other defendants' counsel?

(No response.)

Justice Stephens: Is there any redirect examination?

Mr. Steffen: I have one or two questions.

Redirect Examination

By Mr. Steffen:

Q. I want to ask one or two questions, Mr. Speer, in regard to Government's Exhibit No. 641. Could you tell us whether the shape of the edge which you make according to your patent, could vary from the one shown here as

6234 Government's Exhibit 641? A. Yes, it does, because it is an absolutely closed edge.

Q. What other shapes were possible? A. Well, beveled-edge, and a square-edge, and various way of inserting this reinforced edge.

Mr. Steffen: I think that is all, your Honor.

Justice Stephens: May this witness be excused?

Mr. Bromley: I would like to have the record show that I reserve the right, if I may, to have this witness recalled in the event his testimony is reinstated, for further cross-examination with respect to it.

Justice Stephens: The record may show that. You may have that right reserved.

Justice Jackson: Are you through with this witness?

Mr. Steffen: I am through, your Honor.

Mr. Bromley: I am through with him, yes sir.

Justice Stephens: You may be excused now, Mr. Speer. Thank you for coming here and helping us.

(The witness was excused.)

Justice Stephens: Do you have any other witnesses today?

Mr. Steffen: We have none, your Honor.

Justice Stephens: Shall we return to the exhibits that we were discussing last night?

Mr. Knuff: Yes, that is as good a matter as any 6235 to take up.

Justice Stephens: Judge Garrett called my attention to the fact, for your information, gentlemen, that on Tuesday, the 25th of April, it will be necessary to recess this Court on account of the fact that a conference is to be had in the Court of Customs and Tax Appeals, which Judge Jackson and Judge Garrett will have to attend.

Will your case, do you think, be likely to be closed by that time?

Mr. Knuff: I would say yes, your Honor.

Justice Stephens: Do you have any other witnesses?

Mr. Knuff: Mr. Adams, I presume, will want to call Mr. Dowd; and Mr. Bromley, I presume, will want to recall Mr. Speer. For the present I can't think of any other witnesses that we intend to call.

Justice Jackson: There are no more new witnesses, outside of Dowd?

Mr. Knuff: Mr. Redfield, of course—

Justice Stephens: (Interposing) Judge Jackson said, "new witnesses".

Mr. Knuff: No new witnesses, that is correct.

Justice Stephens: It may be that it would be desirable for the convenience of some out-of-town counsel, if your case isn't closed at that time, that they not come back until

Wednesday of that week, so that you gentlemen who come from out of town and go home for the weekend, won't
6236 have to come back for just a day. However, we can leave that until later.

Mr. Knuff: That will give us all of next week, anyway.

Justice Stephens: Yes, we will be here all next week, without interruption.

Mr. Knuff: I would say that we ought to be able to finish up in good shape by then.

Justice Stephens: How many of these exhibits have you?

Mr. Knuff: Somewhere in the neighborhood of 150. I am not saying that facetiously.

Justice Stephens: If we have to go into the relevancy and materiality of each one of them, I don't know whether we can do that in a week, or not.

Mr. Adams: Might I make a statement?

Justice Stephens: Yes.

Mr. Adams: There is a point in the record here which I would like to clear up, where I inadvertently made a statement which I, in checking it over last night, found I was wrong about.

Justice Stephens: In yesterday's record?

Mr. Adams: Yes, your Honor, and it appears on page 6395, at the bottom of the page. Judge Jackson asked me about these exhibits, and asked if I had copies of them, and I said "No."

Justice Stephens: That is at line 25 of page 6395, and the first line on page 6396.

Mr. Adams: That is right.

6237 I was confused about that. I don't have copies of the subsequent exhibits, the statements which were said to be attached to subsequent exhibits in the request to produce, but I find that, so far as I can ascertain, we do have copies of some of these documents, and I didn't want to mislead the Court in that respect. I was confused as to the two.

Justice Stephens: Very well, thank you for making that statement.

Mr. Adams: Secondly, I would like to say that the Presiding Judge made the suggestion, to which I agreed, that I ought to go to such limits as I could to avoid the necessity of putting in these exhibits through witnesses. I wanted to tell your Honors that so far as I can see, these are royalty reports—I am referring to Exhibits 624 to 640,

inclusive—and as I say, we have admitted that Mr. Krug signed them.

We do not have the data or the records upon which we can verify these reports, and we have no way of knowing whether the reports state the facts, or whether they don't state the facts. That is one reason that I couldn't make any admission about them.

However, since they appear to be royalty reports, although I can't say that they report correctly the figures, I am willing to stipulate with the Government that during the months mentioned in the reports, we did make reports, and that we reported and paid all the royalties due for
6238 the patented board manufactured by us under the licenses.

That would seem to me, perhaps, to avoid the necessity of putting in these documents. I am certainly glad to stipulate that we did pay all the royalties that were due. I am, unfortunately, unable to tell the Court whether these statements are accurate or not.

Justice Stephens: Thank you, Mr. Adams.

Now, perhaps I ought to make an announcement. The discussion last night was, in a sense, academic. I was looking for light and counsel were attempting to shed it. I have given some thought to the matter, and I am not yet going to make a ruling because there is nothing before the Court to clear up the discussion which we were indulging in last night.

I would like to tell you what my tentative views are, gentlemen, with respect to the use of Rule 36 in respect to the problem before us last night.

In the first place, I think Rule 36 does contemplate an extra-judicial proceeding, except where it is sought to compel the assessment of costs, and attorneys' fees because of a failure to make an admission which ought to have been made.

I think that part of the Rule which permits counsel for the plaintiff—to use plaintiff as an example—to ask for an admission of fact, is an attempt to save time in this sense, that if the opposite party, the defendant, can
6239 admit a fact, then that fact is taken out of issue, it needn't be proved or disproved on either side.

It seems to me that where counsel for the defendant, as in this instance, have admitted the correctness of a signature, like Mr. Krug's signature, and have also admitted, as you did, Mr. Adams, with respect to this series of exhibits,

that they were the authentic reports of the company—you said that at one place in the record—so that they would be binding upon the company, then we would be past the question of identification and past the question of connection.

It seems to me that if an admission merely admitted the signature on the document as being the signature of the person purporting to sign it, that the Government would still have to show that he had authority to sign the statement.

But where you admit that it is the authentic act of the company, then the Government is saved that difficulty.

Now, with respect to this matter of cross-examination, which is more critical, I was, I think, under a misapprehension last night as to how the Government intends to use these documents, and I may still not be fully informed. But after thinking the matter over and reading the colloquy, last night, it seems to me that the Government must be intending to use these documents as admissions. Is that right?

Mr. Knuff: We are using these documents as evidence from which the Court can infer an admission. We
6240 have asked the defendants to admit that the facts contained therein are true.

Justice Stephens: But suppose the defendant doesn't make the admission?

Mr. Knuff: Then we are going to offer these as evidence —or rather, we are going to offer an accredited document in evidence, so that the Court can infer from that accredited document that the facts therein stated are true.

Justice Stephens: You are getting around the hearsay rule, aren't you, on the theory that the documents constitute an admission of a party?

Mr. Knuff: Evidence of an admission of a party.

Justice Stephens: They are admissions of the party.

Mr. Knuff: That is right.

Justice Stephens: That, I think, raises a point that I ought to have commented upon last night, in which I perhaps may have misled counsel as to the attitude of the Presiding Judge, although I think it is clear on the whole of my statement that I was speaking tentatively only.

We have had dozens of documents in evidence here, gentlemen for the defendants, which have come in without cross-examination. If they come in as an admission, that is to say, if John Doe is called to the witness stand to identify the signature of Richard Roe, on a document, and if it is

shown that that signature is the signature of an of-
6241 ficer of a party, then the statement in the document thus identified can come in, notwithstanding the hearsay rule, because it is an admission, provided it contains relevant and material matter.

Of course all matter not under oath and subject to cross-examination in the courtroom, is hearsay, and is excluded unless it comes within an exception. But a properly identified admission is an exception, and therefore an admission can come in without cross-examination.

So I don't think the Government is bound to call the witnesses under those circumstances.

That is just by way of preliminary statement of my own views. We will reach these points for actual ruling when you get into offering documents.

Mr. Adams: I think, your Honor, that I should perhaps in justice to my own position, say that I did not intend anything that I ever said to be taken as an admission that, as your Honor indicated—

Justice Stephens: (Interposing) I didn't say you said that, Mr. Adams. I said you said that these documents signed by Mr. Krug were authentic, and I will show you where you said it.

Mr. Adams: I am looking at this page 6386. I made a statement about them there, beginning on line 4. May that perhaps be what your Honor is thinking about?

6242 Justice Stephens: No, it occurred at some other place.

Justice Garrett: Did you say page 6386?

Mr. Adams: Yes, line 4, and from there on, Judge Garrett, I talked about it.

Justice Stephens: At the bottom of page 6392 you say:

"As far as I am concerned, I have gone just as far as I can by admitting that these are—there is no question about it—authentic documents on our part."

Mr. Adams: Well, I certainly would like the opportunity to state to the Court that I did not intend that statement to go beyond the admissions which I have made on the record, and filed with this Court, and if I did say that, I did not intend to say so, I did not intend to say that I admitted that these were authentic documents of Certain-teed, because I do not so admit, as I have tried to make clear earlier this afternoon.

In that connection, I draw your Honor's attention to the fact that I was requested to admit, in the requests for admissions:

"1. The following statements, photostatic copies of which are attached hereto, made a part hereof, and marked Exhibits 1 through 34, were signed on behalf of Certain-teed Products Corporation by Geo. P. Krug."

I admit that, and that is all I admit.

The same is true with respect to 2 and 3, and
6243 those are the later documents in this group.

But that position that I take would be subject to any ruling that your Honors might want to make, upon the legal effect of that admission, of course.

But I certainly do not want to be taken as having said, and would like to withdraw any intimation, that I did admit that these were authentic documents.

Justice Stephens: Well, I don't know whether there is much difference between the use of the word "authentic" and the use of the words "signed on behalf of the company", although perhaps you might still wish to get in between those two phrases for the purpose of showing, or contending, that Krug was not the kind of an auditor who had it within the scope of his authority to make this statement, or rather to sign this statement.

For the Government to use these documents as admissions, of course, they must be signed by someone who had authority to speak for the company. But if you say that he signed them on behalf of the company, I should think that you had gone quite a ways in that direction.

Mr. Adams: I certainly have, your Honor. That was why I said yesterday that I had gone just as far as I could. Later on in their requests, however, they want to know whether the statements contained therein are true.

Mr. Bromley: On the subject of your Honor's
6244 remarks, with respect to admissions, I take it that these documents which are being received as admissions, are binding only on the parties who made them, and in that connection their status will not hereafter be changed, even if it be determined that prima facie proof of conspiracy, outside of declarations of co-conspirators, has been adduced by the Government.

I want to advert to that now, because as I understand the law, if the Government offered here in evidence now a signed confession of violation of the Sherman Act by the president of the Certain-teed Company, that document would be admissible as an admission against Certain-teed, and as against Certain-teed only. It would never become transformed into any kind of a declaration which would be

binding on anybody else, because it was not made in furtherance of any conspiracy. Therefore, under the procedure which the Government is now adopting, these things are coming in, not as declarations of co-conspirafors, subject to connection later, and subject to being held to be binding on everybody if proof of a conspiracy appears in the record, but they are being offered merely as admissions, and they are binding only against the party who made them, and that status will never be changed by anything that could happen in this case.

Mr. Knuff: I don't want to be bound by what Mr. Bromley says is his understanding. I think that some of
6245 the documents that are going to be introduced will be introduced purely and solely for the purpose of admission. On the other hand, I feel quite sure—I can't place the one, two, three or half dozen out of the hundred and fifty that we are going to use as declarations,—but I feel quite sure that in this list of exhibits there are some that will be used as declarations of a co-conspirator.

In fact, I would think that even those exhibits that are used as an admission, if they are in furtherance of a conspiracy, or descriptive of it, or show the operator of the conspiracy, then, after the conspiracy has been shown aliunde, then those admissions would likewise be considered declarations.

For the most part I think Mr. Bromley is correct, but I just want to enter a caveat—

Justice Stephens: (Interposing) I have never been able to see any difference, myself, gentlemen, so far as the hearsay rule is concerned, between what you call an admission and what you call a declaration.

The only reason either such thing can come in against the hearsay rule is that it is a statement by a party, or by someone authorized to speak for a party, on a relevant and material subject. That gets it around the hearsay rule.

If it is a pure admission, like a confession—to use Mr. Bromley's example, which has been discussed here and
which we discussed earlier in the case, it doesn't, as
6246 such, bind anybody but the person who makes the admission, even if a conspiracy is proved aliunde.

As I stated the other day, it is hard for me to imagine how it could occur, but I suppose, theoretically, if a confession could be shown to have furthered the conspiracy, that it might be binding upon others under the general doctrine of substantive law.

When we pass the hearsay rule, we get into questions of substantive law. The only reasons that declarations of co-conspirators can be binding upon other co-conspirators, is because under the substantive law once a conspiracy is shown, the acts and words of all the conspirators, of each of the conspirators, are binding upon all the others, if in execution and furtherance of the conspiracy, but not otherwise.

Now, Mr. Bromley, do you contend that a confession, if a conspiracy were shown aliunde the confession, and if it were also shown that the confession furthered or executed or tended to execute the conspiracy, wouldn't be binding just because it is called a confession, upon others? I don't see how that could happen, but if it did happen, I should think it would be binding, Mr. Bromley.

Mr. Bromley: I agree with your Honor, but the point I am trying to make, I think, is somewhat different. Mr. Adams comes in here and makes an admission, let us assume, as to the authenticity of a document, which, if
6247 received on the basis of that admission, is binding on him. But it certainly is not binding on me. I have made no concession about authenticity. There has been no witness on the stand to establish its authenticity.

Justice Stephens: I think you are perfectly right about that.

Mr. Bromley: Therefore, I say that the document can never change its status as to me. It is an admission by Certain-teed, but it can never become an act of mine or an act of any other defendant, whether there be proof of conspiracy or not.

Justice Stephens: I agree with you that far, fully. I don't think that there can be any dispute about it, and I think Mr. Knuff has just stated that he agreed with you that far. All I have added is that—

Mr. Knuff: (Interposing) I don't believe I quite agree with that. I don't believe I want to be bound by that statement, your Honor. I don't believe that I would agree with Mr. Bromley that far.

Justice Stephens: How can the admission of one party be binding upon another party unless it is in furtherance or execution of the conspiracy? The only time the admission of one man can ever bind another man is when they are acting in concert and the admission is shown to further or execute the conspiracy.

6248 Mr. Knuff: That is right. Now if the attorney for one of these parties comes in and says, "My

client did what appears on this paper," and if what appears on this paper is in furtherance or descriptive of the conspiracy, then, when the conspiracy is shown, the act of that one defendant, on the basis of partnership, makes his act the act of all partners.

Justice Stephens: No, I can't go that far with you, because you used the word "descriptive".

Mr. Knuff: I think I can show you some authority on that. I would be glad to be prepared as to that on Monday.

Justice Stephens: Well, I think we have established the law by thorough argument, although I will be glad to hear from you and see any authorities that you may want to present. But I think the law is absolutely elementary, is it not, that the declarations of an alleged co-conspirator cannot be binding upon any other co-conspirator unless you have two things: First, that a conspiracy is shown aliunde the declaration; and second, that the declaration is shown to be in furtherance of or execution of the conspiracy.

Now that we have ruled a dozen times in this case, and it has been the guiding principle of substantive law throughout the case.

Now an admission is a form of declaration. How you could make an admission of one co-conspirator binding upon others, and get it in—it can get in past the hearsay rule because it is an admission, and therefore you don't have to have cross-examination—but when it gets in, it gets in only as the act of the particular person making the admission, the statement of that particular person making the admission. Whether you call it an admission or a declaration, I don't see how, as a matter of substantive law, it can bind anybody but the person making it, unless it is shown to be in furtherance of or in execution of a conspiracy.

6249

Mr. Knuff: Maybe we are not far apart at all; maybe it is just our understanding of what is meant by "in furtherance of the conspiracy".

Justice Stephens: I think that is the difficulty, and the thing I am fearful you are going to have trouble with, with respect to these exhibits, is that they simply seem to be descriptions of royalty payments and things of that sort. Maybe they further a conspiracy and maybe not, I don't know. I suppose that is your point, isn't it, Mr. Bromley?

Mr. Bromley: Well, that is a point, but I want to make it plain that, following what your Honor has just said

about the binding effect of an admission, the admission which can never bind me is Adams' admission here in the courtroom that this document is an authentic document. Now, that admission cannot be said to be in furtherance of any conspiracy. Nothing that Adams admits in this courtroom can, by any possibility, be said ever to
6250 be in furtherance of any conspiracy, and therefore Mr. Adams is not my agent, and his admissions as to authenticity do not bind me and do not make these documents or their contents binding upon me in any sense whatsoever at any time, no matter what other evidence is or is not in the record.

I think that is the fundamental misconception which Mr. Knuff has in his mind. I think he thinks he can put these things in on Mr. Adams' admission of authenticity, and then somehow they will get to be binding on me. That is not so. They are not binding on me unless there is a witness on the stand whom I have an opportunity to cross-examine, and there is established here some evidence of their authenticity as against me. Mr. Adams' admission in this courtroom is not binding upon me and never can be, because it is not in furtherance of a conspiracy and cannot become a declaration of a co-conspirator of mine.

Justice Stephens: I don't see any escape from that.

Mr. Knuff: I think I understand Mr. Bromley's position. However, I don't agree with it.

Justice Stephens: Very well, we have to meet that when you get a question to be ruled on.

Announce the recess.

(Whereupon a recess was taken at 4:05 o'clock p. m. until 10:00 o'clock a. m., April 17, 1944.)

6251 IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF COLUMBIA

Civil Action No. 8017

UNITED STATES OF AMERICA,

Plaintiff,

v.

UNITED STATES GYPSUM COMPANY; NATIONAL GYPSUM COMPANY; CERTAIN-TEED PRODUCTS CORPORATION; THE CELOTEX CORPORATION; EBSARY GYPSUM COMPANY, INC.; NEWARK PLASTER COMPANY; SAMUEL M. GLOYD, doing business under the name of TEXAS CEMENT PLASTER COMPANY; SEWELL L. AVERY; OLIVER M. KNODE; MELVIN H. BAKER; BROR H. DAHLBERG; HENRY J. HARTLEY; FREDERICK G. EBSARY; and FREDERICK TOMKINS,

Defendants.

Seventh Floor,
Internal Revenue Building,
Washington, D. C.,
Monday, April 17, 1944.

The above-entitled cause came on for further hearing at 10:00 o'clock a. m., pursuant to adjournment, before Honorable Harold M. Stephens, Honorable Finis J. Garrett, and Honorable Joseph R. Jackson, sitting as the District Court of the United States for the District of Columbia.

APPEARANCES:

(Same as heretofore noted.)

6257 You may proceed.

Mr. Knuff: May it please the Court, at this time I would like to offer in evidence Government's Exhibits 624 to 640, inclusive.

Justice Stephens: That is that first series of purported royalty reports, isn't it?

Mr. Knuff: That is right, Your Honor.

Justice Stephens: As to which Mr. Adams has admitted that Mr. Krug signed the documents on behalf of Certain-teed?

Mr. Knuff: That is correct.

Justice Stephens: Is there any objection to those?

Mr. Keber: Yes, Your Honor.

Justice Stephens: Are you here representing Mr. Adams?

Mr. Keber: Yes. Mr. Adams was unavoidably required to go to Chicago on very important business, and I am here to attempt to take up the slack to some extent.

Justice Stephens: What is your name?

Mr. Keber: Peter Keber. My presence was announced in the early part of the case, but I haven't been here much since.

Justice Stephens: You are a member of Mr.
6258 Adams' office, are you?

Mr. Keber: Yes, I am a member of Mr. Adams' office.

Justice Stephens: Very well. I am sorry we haven't become better acquainted with you.

Mr. Keber: I object to so much of these exhibits as have been offered, on the ground that the exhibits, on the face of them, contain pencilled notations. The time and the place and the person who put these pencilled notations upon the exhibits has not been shown and has not been admitted, and therefore the exhibits, it seems to me, on their face are not in the form in which they were signed by Mr. Krug.

As I understand it, the only admission before the Court is Mr. Krug's signature on behalf of Certain-teed.

I also call the Court's attention to the fact that Exhibits 628 through 640 refer to the license agreement dated May 22, 1929. Now I believe that Mr. Knuff, from reading some of the back testimony, has stipulated that he is not relying upon any of the matters contained in the capital letters at the top of these exhibits. If that stipulation is agreed to, then that part of my objection is withdrawn. Otherwise, we take the position that the agreement is misstated, that is, as being as of May 22, 1929, in Exhibits 628 to 640, inclusive.

Mr. Knuff: I don't think Mr. Keber quite has the Government's position there. We are relying on the
6259 matters that are contained at the top of the page in capital letters. I feel that from Exhibit 628

through 640, there has possibly been a mistake in so far as Certain-teed is concerned, because at that time Certain-teed may take the position that they were operating under the license of October, 1929. But we definitely are relying upon the matters that are contained at the top of the page.

Justice Jackson: Did that supersede the May license?

Mr. Knuff: Yes, Your Honor.

Justice Jackson: You are relying upon what is on the top of those pages to show that it is a statement of Certain-teed concerning the royalties paid under their license?

Mr. Knuff: That is right.

Justice Jackson: But so far as the date is concerned, you concede that it was not under the May license, but under the October license which superseded that agreement?

Mr. Knuff: That is right.

Justice Jackson: That is what I understood your position to be.

Justice Stephens: We should think, in any event, that since Mr. Krug signed these on behalf of the company, the objection would probably go to the weight of these exhibits. In other words, isn't there a prima facie identification and correctness established by the admission? If you wanted to dispute the date, wouldn't you be obliged
6260 to do that yourself by evidence?

Mr. Keber: Well, I had assumed, if the Court pleases, from the statement Mr. Knuff made, as I interpreted it in reading the testimony, that he would have no objection at least to that amendment, that is, that this was an obvious mistake, it seemed to be an obvious mistake.

Justice Jackson: Just with respect to the date?

Mr. Keber: Yes.

Justice Stephens: So far as that is concerned, you do concede that, do you not, Mr. Knuff?

Mr. Knuff: I think it was an obvious mistake.

Justice Stephens: That may be shown in the record. I should think that would protect you, Mr. Keber.

Mr. Knuff: Now in so far as the pencilled notations that are on the exhibit, we, of course, are not offering the pencilled notations as a part of the exhibits, because I believe they were put on by USG.

Justice Stephens: And if the exhibits are received, they will be received without reference to the pencilled notations.

Mr. Knuff: Yes.

Justice Stephens: Is there any objection as to relevancy or materiality?

Mr. Bromley: The other defendants, may it please the Court, object to them as incompetent and as not
6261 binding on them; and also as immaterial and irrelevant. I do not understand the purpose for which all of these exhibits are offered in such detail. If it be to prove merely that the licensees paid royalties under the license agreements, I will stipulate that all the licensees paid all the royalties that were due to USG called for by all the agreements. I will even stipulate that up to the time this suit was started, we received about $4,000,000 in royalties from them; and after the suit was started we have received several hundred thousand dollars a year from them in royalties, up to the present time.

I don't see the purpose of burdening the record with all of this detail. I thought that was admitted by the pleadings, anyway, and was not an issue in the case.

Justice Stephens: The Court was going to inquire, Mr. Knuff, in considering these over the weekend, whether that all couldn't be stipulated to. There seems to be no dispute in the case that royalties in large sums were paid.

Mr. Knuff: Well, again, Mr. Bromley assumes to be able to read what is in our mind. That isn't the purpose of the offer at all.

Justice Jackson: Why don't you tell us what it is?

Mr. Knuff: The purpose of the offer, if Your Honor please, appears on the second line, "Gypsum Wall Board—Seconds—62,284 Square Ft." That is offered for the pur-
pose of showing that at the time of this report, Gyp-
6262 sum Wall Board—Seconds were sold; that subsequently, seconds were taken off the market. That is under paragraph 45(b) of the complaint.

Justice Stephens: You mean that you wish to indicate by other exhibits that seconds later came off the market?

Mr. Knuff: The exhibits themselves will indicate that, Your Honor.

Justice Stephens: I mean by "other exhibits", exhibits other than 624. You are talking about 624 now?

Mr. Knuff: That is right, from 624 down to 637, inclusive, they show that Certain-teed was selling seconds. Then beginning with 638, the place in there "Gypsum Wallboard Seconds", there are dashes to indicate blanks.

Now that won't appear in exactly that form in the rest of them, but it will appear that later on they didn't even bother reporting seconds.

Now in Government's Exhibit 404, which is the price bulletin issued by USG on the 23rd day of May, 1929, USG fixed the price for seconds. Whether or not seconds were sold, of course, wouldn't be evidenced by the fact that they fixed the price for them. These exhibits show that seconds were sold at that time.

Justice Stephens: Well, the Court was under the impression, from the colloquy between counsel at the last session, that you were offering these to prove payment of royalties. If you have some different purpose, we
6263 will, of course, consider that.

It would seem to me that perhaps even the point you now refer to, to-wit the report on the selling of seconds up to a certain date, and the non-selling or non-reporting of selling of seconds after that date, might also be made the subject of stipulation. There are apparently about 150 of these exhibits, and it would take a very great deal of time to get them all in evidence, if we have to inspect each one of them. Also, if the case ever reaches the state of appeal, the expense of dealing with them, of course, is to be considered, on both sides. However, we don't wish to handicap your case. If you feel you must have them in, we will be glad to hear you about it.

Could the sale of these seconds, and non-sale of seconds, be stipulated to by Certain-teed?

Mr. Keber: Will you pardon me a moment?

Justice Stephens: Yes, certainly.

Mr. Keber: I am afraid, if the Court please, that my knowledge of that situation doesn't encompass that.

Justice Jackson: Couldn't you very well agree that so far as Exhibits 624 to 637, inclusive, are concerned, they show on their faces that gypsum wallboard seconds were sold in certain quantities, at an average price, and the amount; and that from Exhibit 638 to 640, there has been no manufacture or sale of gypsum board seconds?
6264 That is what the thing really says, on its face. I wonder if that couldn't be done?

Justice Stephens: Well, if I may interpolate and add to my colleague's statement, I don't think that would be sufficient as a stipulation, or perhaps I should say that would be over-sufficient. If the stipulation is as to what the exhibits show, we might as well have the exhibits in. We have got to have some stipulation as to what the volumes and dates of seconds sales were, irrespective of the exhibits, if you are going to get along without the exhibits.

Mr. Keber: Does the Court have in mind a stipulation with respect specifically to gypsum wallboard seconds?

Justice Stephens: Yes, that is right.

Mr. Keber: And the volume that was reported as sold, of those seconds?

Justice Jackson: Appearing on these exhibits.

Justice Stephens: We don't wish to over-urge you, Mr. Keber, to make a stipulation. What we are suggesting is that since you have already admitted Mr. Krug signed these documents in behalf of Certain-teed, it would appear that they are presumptively correct. That being true, the Court and counsel on both sides of the case could be saved the difficulty of dealing with such a volume of material if, instead of having the exhibits introduced in evidence, you would look at each one of them and then stipulate as to the amounts of wallboard seconds on which royal-
6265 ties were paid up to a given date; and then stipulate that after that date there were no royalties paid on gypsum wallboard seconds.

But you might want to take some time to do that, and we don't want to over-urge you. You must stand on such rights as you feel you must, in your clients' protection.

Mr. Keber: If the Court please, I would like to take advantage of your suggestion that I have an opportunity to consider that more fully, particularly in view of the fact that I think we have taken the position, and are going to take the position, that we will not stipulate; that is, we have taken the position in our response to the request for admissions that we would not admit the facts stated in these exhibits, and that our admission merely went to the fact that Mr. Krug signed them on behalf of Certain-teed.

Justice Stephens: Let me look at your admission just a moment—

Mr. Knuff: (Interposing) In so far as Nos. 1, 2 and 3 of our requests for admissions are concerned, there are no answers by Certain-teed. Therefore, what is contained in requests 1, 2 and 3 are admitted under Rule 36.

Justice Stephens: We don't seem to have in our files the answers of Certain-teed.

Mr. Knuff: I will let Your Honor have my copy.

(Copy of Certain-teed's answers handed to the Court.)

6266 Justice Stephens: Where is the request for admissions against Certain-teed? Have you got that here, Mr. Cantor?

(Request for admissions against Certain-teed handed to the Court.)

Justice Stephens: That raises another issue, Mr. Knuff. We have now read the answer of Certain-teed. It appears that Certain-teed has not ignored your request for admissions of fact, but has taken the position that—for example on page 2, paragraph (e), of its answer—"that said Request for Admissions is improper and not authorized by the Rules of Civil Procedure in that it does not specifically set forth the relevant matters of fact on which admissions of truth are sought, and the Defendant is therefore unable to make any admissions or denials with respect thereto."

Mr. Adams submitted, you will remember, and I called to your attention the Kraus case—I haven't the full citation in mind—which seemed to hold under the new Rules, Rule 36, that a plaintiff or party asking its opponent for admissions can not submit a blanket exhibit with the request that all matters stated therein be admitted, but must itself pick out, rather than burden the opponent with selecting, the items of fact which it is requested be admitted.

What do you say about that?

Mr. Knuff: We are not down to that yet, Your Honor, because it is not before the Court.

6267 Justice Stephens: I thought you just presented it to me, and that is why I was going over all this material, because you said they had not answered concerning admissions of fact.

Mr. Knuff: The only thing that is before the Court, Your Honor, is the matter contained in paragraph 1 of our request, and that is that:

"The following statements, photostatic copies of which are attached hereto, made a part hereof, and marked Exhibits 1 through 34, were signed on behalf of Certain-teed Products Corporation by Geo. P. Krug."

And that is all I am offering these exhibits for at this time.

Justice Stephens: That is very true, Mr. Knuff, but the Court also has some responsibility in the situation, and the Court was trying to arrange to save your time and the Court's time and the defendants' time by getting a stipulation on the items of fact, and Mr. Keber has just answered that he couldn't stipulate because they were unwilling to admit the facts in view of the form of your request for

admissions, and you replied to that that they hadn't made any answer at all concerning the matters of fact. Therefore, I thought I was put to the duty of examining into those matters.

But if we can't stipulate, I suppose we can't. So let's go ahead. You may offer these under your Paragraph 1.

6268 Is there any objection as to relevancy or competency, other than what has already been uttered by Mr. Bromley? Do any of the other defendants make any objection?

Mr. Johnston: I assume those inure to the benefit of all defendants other than Certain-teed?

Justice Stephens: Yes.

Mr. Keber: May I ask the Court a question? I assume, from Mr. Johnston's remark, that the objection as to relevancy inures to my benefit as counsel for Certain-teed, Certain-teed's benefit, as well, in spite of the fact that I didn't specifically make that objection?

Justice Stephens: You may make an objection yourself as to relevancy and materiality, if you wish to.

Mr. Keber: I object to the documents on the ground that they are not relevant or material for the reasons stated by Mr. Bromley in that connection.

Justice Stephens: We think if the documents are offered for the purpose stated by Mr. Knuff, to prove payment of royalties on certain amounts of seconds up to a given date, and thereafter the non-payment of royalties on seconds, that since they have been admitted to have been signed by George P. Krug in behalf of Certain-teed, they would be admissible as admissions of Certain-teed on that subject, and that they are relevant and material under the pleadings.

So those objections are overruled, and the exhibits
6269 are received for the limited purpose stated.

(The documents referred to, marked as Government's Exhibits Nos. 624 to 640, inclusive, were received in evidence for the limited purpose stated.)

Mr. Knuff: If Your Honor will indulge me now, I will mark these. I couldn't mark them before I came into Court because I didn't know what other exhibits, if any, were going to be used.

Justice Stephens: Certainly.

Mr. Bromley: That means that these exhibits are re-

ceived as binding only against Certain-teed, then, if Your Honor please?

Justice Stephens: Are you offering them as against other defendants?

Mr. Knuff: No, these are just an admission as to Certain-teed, Your Honor.

Justice Stephens: That may be understood.

We will take a five-minute recess.

(Thereupon, a short recess was taken, after which the trial was resumed as follows:)

6270 Mr. Knuff: May it please the Court, I would like at this time to have marked for identification Government's Exhibits 646 to 692, inclusive.

(The documents referred to were marked Government's Exhibits Nos. 646 to 692, inclusive, for identification.)

Mr. Knuff: Exhibit No. 646 is a two-page statement, signed by George Krug, George P. Krug, and sworn to on the 16th day of March, 1931.

Exhibit No. 647 for identification, comprising two pages, is a statement signed by George P. Krug and sworn to on the 15th of April, 1931.

Exhibit No. 648 comprises two pages, and is a statement signed by George P. Krug on behalf of Certain-teed, and sworn to on the 13th day of May, 1931.

Exhibit No. 649 comprises two pages, and is a statement signed on behalf of Certain-teed by George P. Krug, and was sworn to on the 2nd day of July, 1931.

Government's Exhibit 650 for identification comprises three pages, and was signed on behalf of Certain-teed by George P. Krug, and was sworn to on the 19th day of August, 1931.

Exhibit 651 comprises two pages, was signed by George P. Krug on behalf of Certain-teed, and was sworn to
6271 the 21st day of September, 1931.

Exhibit 652 for identification comprises two pages, and was signed on behalf of Certain-teed by George P. Krug, and was sworn to on the 19th day of October, 1931.

Exhibit 653 comprises two pages, was signed by George P. Krug on behalf of Certain-teed, and was sworn to on the 19th day of November, 1931.

Exhibit 654 comprises two pages, was signed by George P. Krug on behalf of Certain-teed, and was sworn to on the 17th of February, 1932.

Exhibit 655 comprises two pages, was signed on behalf of Certain-teed by George P. Krug, and was sworn to on the 20th day of April, 1932.

Exhibit 656 comprises two pages, was signed on behalf of Certain-teed by George P. Krug, and was sworn to on the 20th day of May, 1932.

Exhibit 657 comprises two pages, was signed on behalf of Certain-teed by George P. Krug, and was sworn to on the 17th day of June, 1932.

Exhibit 658 comprises two pages, was signed by George P. Krug on behalf of Certain-teed, and was sworn to on the 25th day of July, 1932.

Exhibit 659 comprises two pages, was signed on behalf of Certain-teed by George P. Krug, and was sworn to on the 15th day of August, 1932.

6272 Exhibit 660 comprises two pages, was signed by George P. Krug on behalf of Certain-teed, and was sworn to on the 20th of September, 1932.

Exhibit 661 comprises two pages, was signed by George P. Krug on behalf of Certain-teed, and was sworn to on the 20th of October, 1932.

Exhibit 662 comprises two pages, was signed by George P. Krug on behalf of Certain-teed, and was sworn to on the 17th day of November, 1932.

Exhibit 663 consists of one page, which was signed on behalf of Certain-teed by E. H. Laney, and was sworn to on the 15th day of December, 1930.

Exhibit 664 comprises two pages, and was signed on behalf of Certain-teed by E. H. Laney, being sworn to on the 21st day of January, 1931.

Exhibit 665 comprises two pages, was signed on behalf of Certain-teed by E. H. Laney, and was sworn to on the 20th day of July, 1931.

Exhibit 666 comprises two pages, was signed by E. H. Laney on behalf of Certain-teed, and was sworn to on the 15th day of December, 1931.

Exhibit 667 comprises two pages, was signed by E. H. Laney on behalf of Certain-teed, and was sworn to on the 20th of January, 1932.

Exhibit 668 comprises two pages, was signed by
6273 E. H. Laney on behalf of Certain-teed, and was sworn to on the 20th day of December, 1932.

Exhibit 669 comprises three pages, was signed on behalf of Certain-teed by Benjamin B. Watson, and was sworn to on the 19th of January, 1933.

Justice Stephens: Do those two pages follow Watson's affidavit?

Mr. Knuff: Yes, your Honor.

Justice Stephens: What is the number of his affidavit?

Mr. Knuff: 669. That is a three-page exhibit.

Exhibit 670 for identification is the four-page exhibit, and was signed by Benjamin B. Watson on behalf of Certain-teed, and was sworn to on the 20th of February, 1933.

Exhibit 671 is a four-page exhibit, was signed by Benjamin B. Watson on behalf of Certain-teed Products Corporation, and was sworn to on the 20th day of March, 1933.

Exhibit 672 is a four-page exhibit, was signed on behalf of Certain-teed by Benjamin B. Watson, and was sworn to on the 21st of April, 1933.

Exhibit 673 is a three-page exhibit, signed by Benjamin B. Watson on behalf of Certain-teed, and was sworn to on the 22nd day of May, 1933.

Exhibit 674 is a four-page exhibit, was signed by Benjamin B. Watson on behalf of Certain-teed, and was sworn to on the 20th day of June, 1933.

6274 Exhibit 675 is a four-page exhibit, was signed by Benjamin B. Watson on behalf of Certain-teed, and was sworn to on the 20th day of July, 1933.

Exhibit 676 is a four-page exhibit, was signed on behalf of Certain-teed by Benjamin B. Watson, and was sworn to on the 17th day of August, 1933.

Justice Jackson: There is no signature there under that jurat.

Mr. Knuff: I beg your pardon, it was intended to be sworn to.

Justice Stephens: It is signed, at any rate.

Mr. Knuff: It was intended to be sworn to on the 17th of August, 1933, but the signature to the jurat is missing. I think that will identify the document, however.

Justice Stephens: How many pages are there in that exhibit?

Mr. Knuff: Four pages, your Honor.

Exhibit 676 is a four-page exhibit, signed on behalf of Certain-teed by Benjamin B. Watson, and sworn to the 19th day of September, 1933.

Exhibit 678 is a four-page exhibit, was signed on behalf of Certain-teed by Benjamin B. Watson, and was sworn to on the 19th day of October, 1933.

Exhibit 679 is a four-page exhibit, was signed on behalf of Certain-teed by Benjamin B. Watson, and was
6275 sworn to on the 20th day of November, 1933.

Exhibit 680 is a four-page exhibit, was signed on behalf of Certain-teed by Benjamin B. Watson, and was sworn to on the 18th day of December, 1933.

Exhibit 681 is a four-page exhibit, was signed on behalf of Certain-teed by Benjamin B. Watson, and was sworn to the 17th day of January, 1934.

Exhibit No. 682 is a four-page exhibit, was signed on behalf of Certain-teed by Benjamin B. Watson, and was sworn to on the 19th day of February, 1934.

Exhibit No. 683 is a four-page exhibit, was signed on behalf of Certain-teed by Benjamin B. Watson, and was sworn to on the 19th day of March, 1934.

Exhibit No. 684 is a four-page exhibit, was signed on behalf of Certain-teed by Benjamin B. Watson, and was sworn to the 19th day of April, 1934.

Exhibit No. 685 is a four-page exhibit, was signed on behalf of Certain-teed by Benjamin B. Watson, and was sworn to the 18th day of May, 1934.

Exhibit No. 686 is a four-page exhibit, was signed on

behalf of Certain-teed by Benjamin B. Watson, and was sworn to the 19th day of June, 1934.

Exhibit No. 687 is a four-page exhibit, was signed by Benjamin B. Watson on behalf of Certain-teed Products Corporation, and was sworn to the 26th day of July, 1934.

6276 Exhibit No. 688 is a four-page exhibit, was signed on behalf of Certain-teed by Benjamin B. Watson, and was sworn to the 20th day of August, 1934.

Exhibit 689 is a four-page exhibit, was signed on behalf of Certain-teed by Benjamin B. Watson, and was sworn to the 20th day of September, 1934.

Exhibit No. 690 is a four-page exhibit, signed on behalf of Certain-teed by Benjamin B. Watson, and was sworn to the 19th day of October, 1934.

Exhibit No. 691 is a four-page exhibit, was signed on behalf of Certain-teed by Benjamin B. Watson, and was sworn to the 19th day of November, 1934.

Exhibit No. 692 is a four-page exhibit, was signed on behalf of Certain-teed by Benjamin B. Watson, and was sworn to the 19th day of December, 1934.

Exhibits 646 to 692, inclusive, are offered in evidence as statements signed on behalf of Certain-teed by the respective parties named.

Certain-teed was requested to admit that the statements were signed by the parties mentioned therein, and Certain-teed, in their answer, has failed to deny that they were signed by the respective persons whose signatures appear thereon.

We now offer in evidence Government's Exhibits Nos. 646 to 692, inclusive.

Justice Stephens: What is the state of the record,
6277 or the state of the admissions, Mr. Keber? Do you admit or do you not, that these last-named exhibits were signed by the persons who purported to sign them?

Mr. Keber: If the Court pleases, we admit that Exhibits 646 through 662, inclusive, were signed by Krug on behalf of Certain-teed, as requested.

Now so much for that feature of it, we admitted that—

Justice Stephens: (Interposing) Well, let's dispose of those first, or do you want to make a further statement before disposing of those?

Mr. Keber: Yes, I do, your Honor.

With respect to those exhibits, counsel for the Government was describing them, and I understood him to say that they consisted of various numbers of pages, most of them two pages, and as I noted from his remarks, that down to Exhibit 662 they were all exhibits of more than one page.

Now, in the requests for admissions, we received but one page of each exhibit. Attached to the request was but one page of each exhibit. The pages that were attached to the request contained a statement thereon, of which this is typical, "Less Sales Purchased per attached."

The statement presumably that is referred to on that page, and by that sentence, is not and was not incorporated in the request for admissions, and therefore whatever response we made to that request obviously did not
6278 cover any such attached paper.

Justice Stephens: That covers all the exhibits, 646 to 662, inclusive?

Mr. Keber: Yes, your Honor.

Justice Stephens: As I understand it, you admitted that Krug signed on behalf of Certain-teed, so far as the page actually submitted to you was concerned, which was the first page of each exhibit, but nothing else?

Mr. Keber: Exactly, sir.

Mr. Knuff: There are no signatures on the other pages.

Mr. Keber: Well, I don't know what the other pages are, I haven't seen them.

Justice Stephens: But the admission would seem not to include, Mr. Knuff, anything except what was actually submitted to the defendants, unless you can take time to look them over and agree that they are the proper attachments, Mr. Keber.

Mr. Knuff: You see, if your Honor pleases, let's take Exhibit No. 646 that you have in front of you there, and look at the heading, "Less Purchased per Statement attached—5,774" square feet.

Now, turn to the second page of the exhibit and you will see, "December Shipments From Gypsum, Ohio", and under "Square Feet", the third figure is 5,774, which is exactly what was on the first sheet, and which is a breakdown
6279 of what was on the first sheet.

Justice Stephens: That is what it purports to be. Why didn't you serve all those papers upon the defendants at once, so that we wouldn't have to go through and identify each one of them?

Mr. Knuff: The reason we didn't serve these other papers on the defendants is because if we had had Mr. Krug on the witness stand, we would have shown Mr. Krug this document, and asked him if that was his signature, and he would have said "Yes", and that would have authenticated the document.

Justice Stephens: It would have, if Mr. Krug had been handed all the pages of it.

Mr. Knuff: We would have asked him if that was his signature, and that would have authenticated the document.

Justice Stephens: It would have authenticated the document as submitted to Mr. Krug, but if all you submitted to Mr. Krug was just the first page, it wouldn't have carried with it an admission of the correctness of the second page or any pages following the first.

Mr. Knuff: We are not asking the defendant to admit the correctness of it at all. They say that they won't. They say that they have no knowledge of whether it is correct or not. Now the correctness of these exhibits is not in issue at this time.

Justice Stephens: But the identification of them
6280 is in issue, Mr. Knuff, and you have got an admission which identifies the first pages, but not the others, unless they are circumstantially connected in some manner.

Mr. Knuff: I think they are circumstantially connected, when you take a look at this, "Less Purchased per Statement attached—5,774," and then take a look at the second page, and you will see the same thing, "5,774".

Justice Stephens: Why aren't you offering them for their correctness? Aren't you relying on them as showing the amount of "seconds" sold up to one period, and not sold thereafter?

Mr. Knuff: We have asked Mr. Adams to admit the correctness of them. Mr. Adams, in his answer, says that he can neither admit nor deny the correctness of them. So therefore, we can't say that this is a binding admission upon Certain-teed.

Justice Stephens: That isn't my question, I am sorry. When we had this last series of exhibits offered, just preceding Exhibit 646, you offered them in evidence not merely as identified, but also as binding for their contents, upon Certain-teed, to the extent that they showed the amount of "seconds" up to a particular date, and no sales of "seconds" thereafter. Aren't you offering these also for a similar purpose?

Mr. Knuff: That is correct, your Honor, we are.

Justice Stephens: But you haven't yet identified,
6281 except as you assert circumstantially, anything but the first pages of these exhibits. I don't see why you didn't submit the other pages to the defendants, and they would undoubtedly have made an admission on them also, if they could have seen them, as to identification.

However, it hasn't been done, and now we have got to meet the situation as it is. Perhaps, Mr. Keber, you can take these, take an hour's time, and go through them and see if they are sufficiently connected, as far as second, third and fourth pages are concerned, where the exhibit has more than one page, so that you can admit that Mr. Krug's signature covered execution of those pages as well as the first page, on behalf of Certain-teed.

Do you think you could do that? Otherwise, the Court has got to go through every one of those second, third and fourth pages, have it demonstrated that they are sufficiently circumstantially connected with the first page so that it may be said that Mr. Krug's signature and the admission of his signature, identifies the second, third or fourth pages, as the case may be.

Mr. Keber: I don't mean to be captious—

Justice Stephens: (Interposing) I don't suggest that you are.

Mr. Keber: My difficulty is that apparently these papers have been separated. Now the suggestion with
6282 respect to circumstantial connection is based upon the fact that certain figures happen to coincide. Where the papers came from which are now sought to be connected with each exhibit that was included in the request for admissions, it does not appear. Once they were separated, I have no way of ascertaining whether those papers that may be submitted to me at this time were the papers originally connected with these or not. They may have been connected in such a way at one time that the figures did coincide—or they might not have coincided at the time they were attached.

I have no way of ascertaining those facts, and the mere fact, therefore, that they now coincide, or may coincide, as presented to me, does not indicate that they did or did not at the time they were originally connected together, if they were.

Mr. Knuff: Answering Mr. Keber's statement as to where we obtained these exhibits, we obtained them from

the United States Gypsum Company. They are the royalty reports that were furnished United States Gypsum Company by Certain-teed. The papers, as we received them from the United States Gypsum Company, were connected. For the purpose of eliminating the photostating bill, and for getting out rather hurriedly the requests for admissions, the second, and possibly third and fourth pages, were not included.

They came from the United States Gypsum Com-
6283 pany's files, and were separated by us over in our office. They were in the form when we received them that they now appear, with possibly letters attached to them, letters of transmittal, that USG presumably had attached to them.

Justice Stephens: With respect to that type of exhibit—we are talking about Exhibits 646 to 662 now—

Justice Jackson: (Interposing) We are talking about Exhibit No. 646 at the present time, I thought.

Justice Stephens: Yes, but the objections are to Exhibits 646 to 662, inclusive, which appear over the signature of Krug, and they are all exhibits where Krug's signature and the jurat appear on the first page, are they not, unlike the Watson exhibits, where the affidavit precedes the succeeding pages?

Mr. Knuff: That is right.

Justice Stephens: So we haven't reached the Watson exhibits yet?

Mr. Knuff: That is right.

Justice Stephens: Well, it is my view, and I think the view of my colleagues, that you haven't identified yet, through the admissions or otherwise, anything except the first page which Mr. Krug signed and swore to.

Justice Jackson: What difference does it make to you, anyway? That second page is merely a breakdown, if it is, of the 5,774 square feet in the case of Exhibit No.
6284 646, is it not?

Mr. Knuff: That is right, it is a breakdown of it.

Justice Stephens: Well, are there any other objections? I suppose you make the objection also to the handwritten material on these exhibits?

Mr. Keber: Exactly, if the Court please.

Justice Stephens: They are not offered by the Government, as I understand it?

Mr. Knuff: That is right.

Mr. Keber: The objection also carries through, on

these exhibits, with respect to the date of the license agreement.

Justice Stephens: Well, the Government will probably concede that it does not rely on that particular date as stated in the title.

Mr. Knuff: That is correct.

Mr. Bromley: The other defendants object to them as incompetent because not binding on any of them, and also as immaterial and irrelevant. I do not understand again the purpose of the offer of this mass of exhibits. What does it show? I again offer to stipulate that royalties were paid by licensees.

Justice Stephens: What is the purpose of this series of exhibits? I am now talking about Exhibits 646 to 692 inclusive.

Mr. Knuff: In addition to showing that there were
6285 no sales of "seconds", this series of exhibits also shows that Certain-teed was purchasing board from outside sources. Now we tried to get Mr. Adams to stipulate that there were considerable quantities of board that were purchased, and he would not so stipulate. Then we made an effort to find out how much board they did purchase, and found these royalty statements, and if your Honors will notice, you can start in with Exhibit 647, and in that month they purchased 5,880 square feet of board; Exhibit 648 indicates that they purchased during that month, 157,625 square feet of board; Exhibit 649 indicates that during that month they purchased 162,656 square feet of board; Exhibit 650 indicates that during that month they purchased 316,573 square feet of board; Exhibit 651 indicates that they purchased 167,520 square feet of board—and so on down through, from 651 to 692 they show, by months, sizeable purchases of board from sources other than Certain-teed.

Mr. Keber: May I be heard on that?

Justice Stephens: Yes.

Mr. Keber: I had understood that Mr. Knuff's offer had to do principally with the fact that it would show, that these reports would show no "seconds" reported as having been sold.

Justice Stephens: That was what he said with respect to the series of exhibits just introduced before this
6286 group. This series which we are now discussing is introduced, as I understand it, to prove by way of

admission on the part of Certain-teed, two things: First, that "seconds" were sold up to some date and not sold thereafter; and second, to prove that board was purchased by Certain-teed from outside sources.

Mr. Keber: Well, with respect to the latter offer, it seems to me that since the exhibits are being offered specifically for the purpose of showing that Certain-teed purchased board from the outside, that that, on the face of it, shows that the exhibits that are being offered are incomplete, because on the face of these exhibits it says, for instance, "Less Purchased per Statement attached"—and since the emphasis is now being laid on the figure that is there shown, it seems to me that the reception of the exhibits without the attached statement makes it an incomplete exhibit, and therefore subject to exclusion under the rule of incompleteness.

Mr. Knuff: The statement that is attached makes it complete.

Justice Stephens: Yes, but the statement that is attached isn't identified.

Mr. Knuff: It is circumstantially identified, your Honor.

Justice Stephens: We have ruled that it is not identified.

Mr. Knuff: Well, even on the first page where it
6287 says, "Less Purchased per Statement attached", and when the second or third sheets go in, or what not, the exhibits show on their face that Certain-teed was buying board.

Justice Stephens: Is there any dispute about the fact that Certain-teed was buying board, as distinguished from the amounts which it bought? How about that, Mr. Keber?

Mr. Keber: I take it that Certain-teed was buying board.

Mr. Bromley: That has already been admitted in the record, that Certain-teed bought board.

Justice Stephens: Well, unless you are relying upon them to prove how much board was bought, I should think then, Mr. Knuff, that you wouldn't need these additional sheets to the exhibits, on that aspect. You could offer them to prove when "seconds" were sold and not sold, but so far as the purchased board was concerned, if it can be conceded by counsel for Certain-teed that board was purchased by Certain-teed between certain dates, is the amount material?

Mr. Knuff: Well, this is the first time it was conceded. We asked them to stipulate, and they wouldn't stipulate

before, we asked them to stipulate that there were substantial amounts purchased, and they wouldn't so stipulate.

We asked Mr. Whittemore on the witness stand, and he said that they purchased somewhere between a couple of dollars' worth and $500, or something like that. Mr. Adams said that he did not have the invoices, and could not
6288 find out how much board they were buying.

Justice Stephens: Well, we realize that there hasn't been a stipulation on the subject before, and therefore it was proper and necessary, indeed, for the Government to go forward with this proof; but unhappily, we all three feel that the attached statements cannot be said to be circumstantially identified because they have obviously been separated and there are so many opportunities for error, so that if you are relying upon them for exact figures, you would be obliged to identify them more satisfactorily.

But if you can now stipulate, if you think you can fairly do that, Mr. Keber, that board in substantial quantities was purchased between given dates, I should think that would take that problem of identifying those attachments out of the case, so that the exhibits could come in, so far as the first pages are concerned, on the other item of "seconds."

The Government wouldn't need to offer the attached pages because they would relate only to the amounts of purchased board, and you wouldn't be prejudiced by their not being attached, because the first pages do show that board was purchased, in something that appears to be in the nature of grand totals. I suppose the attached statements are a breakdown of types of sizes of board?

Mr. Knuff: Between board and lath.

For instance, on Exhibit 646, the second page
6289 shows that there was 3,640 square feet of 3/8-inch board, purchased, and 2,134 square feet of lath, purchased, making a total of 5,574 square feet, which is the figure appearing on the first page, 5,574 square feet of purchased board.

Justice Jackson: Well, you have it on the first page anyway?

Mr. Knuff: Yes.

Justice Stephens: Well, Mr. Keber's objection was that it is incomplete if the Government relies upon exact figures.

It begins to look, however, Mr. Keber, as if it was a little something of a tempest in a teapot. The first page, which Mr. Krug swore to on behalf of the company, does

show the purchase of board, in round numbers, and apparently what the breakdown does is to split it up as between board and lath, and sizes.

However, Mr. Adams is not here, and we don't want to press you to make any stipulation that you feel you ought not make. Will Mr. Adams be back tomorrow?

Mr. Keber: I am afraid not, sir. I expect he will be in Chicago for the balance of the week.

Justice Stephens: Maybe we will have to send out a United States Marshal and get him back here. We have got to try this case, and we have got to have someone here who can act for the defendants.

6290 Mr. Keber: I submit, if the Court pleases, that I will be glad to act for the defendants in this connection.

Justice Stephens: I realize that, and I made that comment only to indicate that if you don't feel authorized to make a stipulation, we don't want to press you to make one. That wouldn't be fair to you or to your client. But if you are not in a position either to speak or not speak for the company, then we must have someone here who can.

Justice Jackson: You are assuming that responsibility, aren't you?

Mr. Keber: So far as I am able to, I am assuming that, yes.

But the Court asked me to stipulate that Certain-teed bought "substantial amounts"—I think that was the expression the Court used.

Justice Stephens: That is right.

Mr. Keber: Now on Exhibit No. 646, taking the amount that appears there, 5,774 square feet, I shouldn't suppose that that would be "substantial".

Justice Jackson: As compared to what?

Mr. Keber: 4,579,000 square feet.

Justice Stephens: Of what?

Mr. Keber: Of board manufactured during that month.

Justice Stephens: When I used the words, "substantial amount", I was thinking in terms of what all the

6291 exhibits showed, and not suggesting that you use the term "substantial" in contradistinction to manufactured board. However, you are not bound to accept the Court's terms. That was just a suggestion in the hope of getting a stipulation.

Mr. Keber: I will be willing to stipulate that Certain-

teed bought board; I think that that is as far as I can go.

Justice Stephens: Very well.

Mr. Knuff: You see, your Honor, these are not approximate figures, they are not round figures, they are actual figures, and the second page is a breakdown of what appears on the first page.

Take, for instance, Exhibit—

Justice Jackson: (Interposing) It seems to me that since the first page is admittedly signed by Krug, and the first page, referring to Exhibit No. 646, contains the figure of 5,774 square feet of board that was purchased—that figure is on there, and Krug signed it, and I should think that it ought to come in for what it is worth; whether it is broken down or not, it is purchased board of some kind.

Mr. Knuff: That is the way I feel, and the only reason we put the second and third pages in here was to meet Mr. Bromley's "complete evidence" rule. We felt that the first page carried with it everything that we wanted in there.

6292 Justice Stephens: Well, that is very true, but unhappily you didn't serve the second, third and fourth pages, respectively, for purposes of identification.

Can you admit this? Apparently the Government does not rely upon the second, third and fourth pages of these exhibits, Mr. Keber, for anything except to satisfy the "complete evidence" rule, and it isn't relying upon them as far as the breakdown aspect is concerned. Would it be safe for you to stipulate that the amounts shown on the first pages of these exhibits represent amounts purchased by Certain-teed, amounts of board purchased?

In other words, can you satisfy yourself by examining these second, third and fourth pages, that they do represent, after all, only a breakdown which does not affect the validity of the gross figures stated on the first page?

Justice Jackson: You don't admit the correctness of those figures at all, do you, in your admissions?

Mr. Keber: I don't deny it either, I don't know. The extent of our admission, sir, was that Mr. Krug signed these on behalf of Certain-teed. Now with respect to the facts, we took a definite position. We discussed that here this morning in connection with the other exhibits. We could not admit the facts.

Now it seems to me that what I am being requested to do by Government counsel is to stipulate facts that we
6293 have already indicated we are unable to admit.

Justice Stephens: Of course, while it is true that

you don't admit these facts stated on the first page, or any other pages of these exhibits, the Government can, if it identifies the first page, and if the first page may come in evidence within the "complete evidence" rule, offer these as an admission on your part. Then, if you doubt the correctness of it, you have to offer evidence to the contrary at the proper time.

But the problem we are up against here is that unless you are willing to stipulate as to the correctness of the figures, which you apparently cannot do, and unless you are willing to admit that Krug's signature identifies the second, third and fourth pages of the exhibits as well as the first, there just isn't any proper legal identification of the second, third and fourth pages; and if you continue to insist that the first page ought not to come in unless explained by the second, third and fourth pages, then, there being no identification of the second, third and fourth pages, we are presented with a problem of admissibility that I don't see any way around.

The Government, however, Mr. Keber, is not relying upon the second, third and fourth pages. Do you really think that you need to insist upon the second, third and fourth pages being put in evidence as explanatory of the first page?

6294 If you do not, and if we could agree that the second, third and fourth pages need not be admitted, and that the first page can come in merely under your admission that the secretary, Krug, signed on behalf of the company, then we are over our problem.

Mr. Keber: Perhaps I can illustrate my difficulty, sir, by saying that as far as I know, from what we have been served with, and from what we have seen, the statements that are attached to these first pages may or may not coincide; they may or may not have coincided originally. I am faced with the possibility that a figure, shown on the first page, may not coincide with the figure shown on the second page. I just don't know.

Under those circumstances, I am reluctant to undertake the responsibility of conceding something that I don't know about. In other words, if the second page was different from the first page at the time it was submitted, then some question might exist as to the propriety of the figure on the first page, or its correctness.

Justice Jackson: As a matter of fact, Mr. Knuff, is there any such discrepancy as has been suggested?

Mr. Knuff: None.

Justice Jackson: And defendants could take advantage of it if there were such a discrepancy?

Mr. Knuff: Certainly.

6295 Justice Stephens: Could you take time, if we were to take a little extra recess this noon, to go through these second, third and fourth pages, and see if they are sufficiently related to the first page so that you wouldn't need to insist upon your objection?

I, myself, am convinced, and I think Judge Garrett agrees with me--I am not sure whether Judge Jackson does or not—that there isn't any legal identification of the second, third and fourth pages of Exhibits 646 to 662, which we are now talking about, with respect to this particular objection. Therefore, they cannot come in. And since the first page refers to them, and is incomplete without the following pages, I don't see how the first page can come in.

Justice Jackson: Well, my stand is this. If those pages, other than the first page, are identified by figures, common sense would seem to indicate that they ought to go right with the first page. If there is a discrepancy, however, or if they are not intelligible by comparison with the first page, of course they are not admissible. But otherwise I would think they are.

Justice Stephens: Well, the problem of determining whether or not they are apparently related by identification is a problem of going through every one of these exhibits very carefully, and it is something that we can hardly

6296 undertake to do on the bench. It would take hours.

Mr. Keber: I would be glad to undertake that during the lunch hour, without committing myself as to what position I will take after having examined them.

Justice Jackson: I understood from Mr. Knuff's statement that that had been done and that there are no discrepancies. Have you examined all of them, Mr. Knuff?

Mr. Knuff: Every one of them, yes sir.

Justice Stephens: That may be true, but we cannot compel the defendant to accept Mr. Knuff's statement, because no matter how much he might rely on his good faith and good judgment, there might be mistakes.

Suppose we take the noon recess now, and take it until two o'clock.

It seems to us that there isn't much likelihood of harm

being done here, Mr. Keber, if the second, third and fourth pages come in. Nevertheless, you are entitled to rely upon the rules, and I think your contentions are correct with respect to them.

So we will take a recess now until two o'clock.

(Whereupon a recess was taken at 12:00 o'clock until 2:00 o'clock p.m.)

6297 AFTERNOON SESSION

(The trial was resumed at 2:00 o'clock p. m., pursuant to recess.)

Justice Stephens: Gentlemen, have we arrived at any possible stipulation?

Mr. Keber: If the Court pleases, I have spent the noon recess, as suggested by the Court, in working on this matter.

With reference to a remark that was made this morning, I might clarify our situation somewhat by saying that with respect to these second sheets, I am advised that the company, Certain-teed Products Corporation, did not have any copies in its possession of the second sheets; and therefore, even had they been sent to us along with a request for admissions, we would probably not have been in a position to ascertain their genuineness and have thus been able to agree to that fact.

Before I turn to the next subject, I also want to make one further remark with respect to a statement made by Mr. Knuff this morning. He said, as I recollect it, that Mr. Adams had been requested, on several occasions, to stipulate with respect to the amount of board that was purchased, and that he had taken the position that it was an insignificant amount—I am just trying substantially to repeat Mr. Knuff's statement—and that Mr. Whittemore had testified that it was a very slight amount, an in-
6298 finitesimal amount. I wasn't sure, although I believed at the time—I wanted to check it up—I was quite certain that Mr. Adams had referred, when he said it was an infinitesimal amount, to metallized board; and that Mr. Whittemore's testimony in that connection, which I have looked at through the noon recess, was specific with respect to metallized lath.

Therefore, I wouldn't like to acquiesce in the statement made by Mr. Knuff with respect to what Mr. Adams was or was not prepared to stipulate.

Now with that preamble, I think we are now in a position to make the following stipulation. The stipulation is this:

On condition that Exhibits 646 through 668—that, I think, encompasses all the Krug and Laney first pages—I will begin again: On condition that Exhibits 646 through 668 be withdrawn, Certain-teed is prepared to stipulate that the first page of the monthly reports, bearing the signature of Krug and/or Laney, covering the months of February through May, 1931, inclusive; July through October, 1931, inclusive; January, 1932; March through October, 1932, inclusive; November through December, 1930, inclusive; June, 1931; November through December, 1931, inclusive; and November, 1932, contain figures indicating that the amounts of gypsum board (wallboard and lath) manufactured and sold by Certain-teed, and the amounts purchased and sold by Certain-teed, were as follows:

6299 February, 1931: Amount manufactured and sold—4,573,776 square feet; amount purchased and sold—5,774 square feet—

Justice Jackson: (Interposing) That is for the month of February?

Mr. Keber: Yes, sir, 1931.

Justice Jackson: That is as it appears on Exhibit 646, isn't it?

Mr. Keber: That is correct.

March, 1931: amount manufactured and sold—5,707,167 square feet; amount purchased and sold—5,880 square feet.

Justice Jackson: The total as I read it here is 5,713,047. Of course, it isn't very material. I was just wondering if I had the right sheet.

Mr. Keber: Do you want to pursue it?

Justice Jackson: That is on Exhibit 647?

Mr. Keber: Yes, sir.

Justice Garrett: I understand that the stipulation you are proposing to enter into is based upon the withdrawal of these exhibits?

Mr. Keber: Exactly.

Justice Garrett: So that it is not necessary for us to fool with these figures that are here and compare them, is it?

Mr. Keber: No, except to check the accuracy of
6300 my stipulation with the statements made on these exhibits.

Justice Stephens: You can check that for yourself. You go ahead and read your stipulation into the record.

Mr. Keber: Answering Judge Jackson, the figure we took was the last balance figure.

Justice Jackson: I see. I didn't see that before.

Justice Stephens: Go ahead with your stipulation.

Mr. Keber: April, 1931: amount manufactured and sold—6,156,704 square feet; amount purchased and sold—157,625 square feet.

May, 1931: amount manufactured and sold—5,788,816 square feet; amount purchased and sold—162,656 square feet.

July, 1931: amount manufactured and sold—3,926,140 square feet; amount purchased and sold—316,573 square feet.

August, 1931: amount manufactured and sold—3,315,176 square feet; amount purchased and sold—167,520 square feet.

September, 1931: amount manufactured and sold—3,716,888 square feet; amount purchased and sold—125,956 square feet.

October, 1931: amount manufactured and sold—3,954,984 square feet; amount purchased and sold—247,445 square feet.

January, 1932: amount manufactured and sold—3,424,854 square feet; amount purchased and sold—194,549 square feet.

March, 1932: amount manufactured and sold—3,126,535 square feet; amount purchased and sold—170,627 square feet.

April, 1932: amount manufactured and sold—4,
6301 067,089 square feet; amount purchased and sold—
52,612 square feet.

May, 1932: amount manufactured and sold—3,514,286 square feet; amount purchased and sold—202,539 square feet.

June, 1932: amount manufactured and sold—3,314,493 square feet; amount purchased and sold—189,885 square feet.

July, 1932: amount manufactured and sold—2,635,089 square feet; amount purchased and sold—115,285 square feet.

August, 1932: amount manufactured and sold—2,779,040 sqaure feet; amount purchased and sold—147,918 square feet.

September, 1932: amount manufactured and sold—2,839,108 square feet; amount purchased and sold—162,816 square feet.

October, 1932: amount manufactured and sold—3,663,558 square feet; amount purchased and sold—229,096 square feet.

November, 1930: amount manufactured and sold—4,662,729 square feet; amount purchased and sold—zero.

December, 1930: amount manufactured and sold—3,260,297 square feet; amount purchased and sold—17,724 square feet.

June, 1931: amount manufactured and sold—4,509,827 square feet; amount purchased and sold—403,859 square feet.

November, 1931: amount manufactured and sold—2,863,663 square feet; amount purchased and sold—214,789 square feet.

December, 1931: amount manufactured and sold—
6302 2,433,991 square feet; amount purchased and sold—84,891 square feet.

November, 1932: amount manufactured and sold—2,351,605 square feet; amount purchased and sold—195,259 square feet.

Justice Stephens: Do you, then, accept that stipulation and withdraw those exhibits, Mr. Knuff?

Mr. Knuff: May I just have a moment?

Justice Stephens: Yes.

Mr. Knuff: You see, the original offer contemplated two aspects, (1) to show that seconds were not being sold; (2) to show the amount of board that was purchased from USG and sold.

Now in so far as the stipulation goes as to the amount of board purchased and sold, although it hasn't been stipulated that it was purchased from USG, I presume that

Mr. Keber would have no objection to adding that to the stipulation, because it all came from USG. That is covered by stipulation, but it doesn't go to the first aspect. I have asked Mr. Keber if he will stipulate that during these months, no seconds were reported as being sold by Certain-teed.

Mr. Keber: Well, I think I can stipulate the following in that connection—

Justice Stephens: (Interposing) I should think you could do that, because the face of these papers, if
6303 they don't report the sales of seconds, don't report them.

What were you about to say?

Mr. Keber: It is a negative matter.

We will stipulate that these reports, those referred to in the previous stipulation, do not contain any separate reference to royalties on seconds calculated on the basis of a selling price for seconds different from the selling price of regular board.

Justice Stephens: Is that satisfactory, Mr. Knuff?

Mr. Knuff: That second stipulation covers the matter that I had in mind.

Justice Stephens: The matter of seconds?

Mr. Knuff: That is right.

Now then, I just want to be sure that the stipulation refers to purchases from USG.

Mr. Keber: Well, I don't think that I could stipulate that. I do not know that. I take it that it doesn't limit itself to the purchase of board from USG, and I have no way of ascertaining how the board was purchased.

Justice Stephens: What difference does it make to your case, Mr. Knuff, whether it was purchased from the USG or from anybody else?

Mr. Knuff: We wanted to tie this to the North Holston contract, the North Holston, the Laramie, and the other
6304 contracts that were the subject of deferred rulings and have subsequently come in.

Justice Stephens: I see.

Mr. Keber: May I just make this additional statement there? There is nothing that I see on the first pages of these documents that refers to where the material was purchased.

Justice Stephens: If that is true, Mr. Knuff, you wouldn't be any worse off with this omission to stipulate concerning USG than you would with the documents in evidence.

Mr. Knuff: Well, if the documents were in evidence in the way in which I have offered them, of course they would show where the board came from. If just the first page is in evidence, I am in no better position.

Justice Stephens: Well, we are agreed that there has been no identification of the second, third and fourth pages, so you are in that position anyway.

Mr. Knuff: Well, I take it, from what Mr. Keber has said, that there is going to be an objection concerning the exhibits beginning with 669, and Exhibit 669 is simply the affidavit itself—

Justice Jackson: (Interposing) Have we finished everything up to that?

Mr. Knuff: No, but I want to make this point: If there is going to be an objection from Exhibit 669 on, and they are just going to say that the affidavits can come in,
6305 the only thing we can do is to re-serve these papers on Mr. Adams. Now it seems to me that that is a useless waste of effort, because when we re-serve them on Mr. Adams he will come in and admit just as he did in this case—he can't do anything else—that is, that the signature appearing on the first page is the signature of Mr. Watson or Mr. Krug or Mr. Laney, whatever the signature is. He will take the same position then as he has taken now.

But if the Court thinks that he ought to see the second and third and fourth pages, we are going to let him see them. We will get the second, third and fourth pages in that way. If we have got to go ahead and serve these over again, we may as well serve the whole thing over again.

Justice Stephens: The problem is this, Mr. Knuff: We are bound to apply the rules, and we can't speculate as to what Mr. Adams will do. He may, if you serve the second, third and fourth pages on them, be willing to admit that Mr. Krug's signature on page 1 was signed in behalf of the company, and that pages 2, 3 and 4 may be treated as accompanying page 1, and therefore validated by Mr. Krug's signature. But if he doesn't do that, you will be right back where you are now.

Mr. Knuff: Well, what we can do then is to say that we got them from USG, and they are submitted here
6306 for the Court's consideration in the same condition that we got them from USG, and that is with the affidavit and then, following, the other pages. It is a highly technical position. No matter if there are 15 pages on these exhibits, they are still Mr. Watson's signature.

Justice Stephens: Provided they are the exhibits which were attached when he signed his signature. That is the problem.

Mr. Knuff: USG knows whether they are or not, because we understood they took photostats of everything they turned over to us. USG knows whether we are trying to slip something over or not. We are not trying to slip anything over.

Justice Stephens: No one suspects the Government of that, Mr. Knuff. The Court is simply in the position of having to apply the rules of evidence when they are invoked. Even though, as you assert, it seems technical to you, the defendants may feel that they have a right to require proof as to the correctness of these items, since you are going to rely upon them.

Is there anything USG can do to forward this situation, that you know of, Mr. Bromley?

Mr. Bromley: Nothing that I know of, if Your Honor pleases.

Mr. Johnston: If the Court please, may I be heard a minute?

6307 Justice Stephens: Yes.

Mr. Johnston: This class of exhibits was divided into three groups this morning. There is involved between 200 and 300 sheets. Now I presume there are a lot more of the same kind of offers. I just wonder if counsel for the Government realize the terrific additional expense they are putting us to in offering all of these, especially in view of the offer of counsel for Certain-teed to stipulate and save all of this expense in the record.

Indeed, I go further and say that it would seem to me that as to these exhibits starting with 624 up to where this stipulation starts, they should also be subject to consideration and a stipulation, and that they might be withdrawn.

Now do you realize that just this morning, one-third as many exhibits, in pages, are being offered, about, as have been offered in this entire case up to date, and I don't know where it is going to stop. The expense of this case is just mounting so terribly here, and I have a small client, and other clients are involved in this thing, and if there were some way of shortening this record and stopping this outlandish expense, I would like to see it done.

Now the Government has not helped us any at all. The Court tried to help us all that it could, but the Government

has consistently refused, all through this case, to furnish us copies of these exhibits, and refuses now, and
6308 they come in with several hundred exhibits to dump into the hopper at the last minute of the trial of this case, and I don't think that is fair, I don't think it is right to expect us to go to this enormous expense, especially as to my client, when I can't see where it means anything at all in this case, or proves anything as against the Texas Company.

I just call that to the attention of the Court in a spirit of fairness, in a matter of dividing the expense of this trial. If there is some way of shortening it, I would like to see it done.

Justice Stephens: How many more exhibits of this type have you in mind offering?

Mr. Knuff: In so far as this particular objection is concerned, it will only be from 669 to 692.

Justice Jackson: You have three more groups, haven't you?

Mr. Knuff: The same objection that has been raised will not occur in the other groups at all.

Mr. Johnston: Why not?

Justice Jackson: It seems to me that we are getting a tremendous record here, and that is what I had in my mind this morning. It seems to be not a matter at issue at all but what this defendant, and probably other defendants, have bought board and sold it, they admit it. And I think Mr. Bromley said royalties had been paid, likewise;
6309 didn't you, Mr. Bromley?

Mr. Bromley: No, sir.

Justice Jackson: Well, they admit purchasing board. Does the quantity that they purchased and sold mean anything?

Mr. Knuff: If they admit that—

Justice Jackson: (Interposing) I understood Mr. Bromley to say that this morning.

Mr. Bromley: I didn't fully apprehend your question. I have admitted that board was purchased and sold; and I have further admitted that on all board manufactured and sold, the licensees paid all the royalties due. So both facts are here without issue in the case.

Justice Jackson: That is my question, as to the necessity of putting all this in. It is going to make it a poisonously big record, I think.

Mr. Knuff: If all the defendants will admit that board has been purchased, and that there have been inter-com-

pany purchases, and that that board has been sold, we haven't any reason to—

(Mr. Knuff and Mr. Steffen confer.)

Mr. Knuff: Mr. Steffen suggested to me that the stipulation as Mr. Keber had read it here this afternoon would be satisfactory to the Government, with the further understanding that the defendants in this case have purchased board from one another.

6310 Justice Jackson: Is that a fact that they all have, that each one of them has? You said "all". Does that mean Texas?

Mr. Knuff: Texas did purchase metallized board.

Justice Jackson: Metallized board?

Mr. Knuff: Yes.

Justice Jackson: Do these exhibits include metallized board?

Mr. Knuff: They do not.

Justice Jackson: That is a horse of another color, then.

Mr. Johnston: The Court, I am sure, remembers the testimony about Texas. They made their board, took it over to another plant, and had it metallized.

Mr. Knuff: Some of it was done that way.

Mr. Johnston: Perhaps two or three small pieces, little orders, insignificant, not a thousandth of one percent of their product.

You remember that question came up on the witness stand, when they were attacking Mr. Chism's testimony before the Grand Jury, and on cross-examination that was explained very clearly, I think, on Your Honor's question, that it was board they made and took over to the plant and had metallized.

Justice Stephens: Mr. Bromley has made a stipulation for USG, and all you are dealing with now, as I

6311 understand it, under these Exhibits 646 to 668, is what you regard as purchases from USG by Certain-teed.

Mr. Knuff: That is right.

Justice Stephens: Can't you accept Mr. Keber's stipulation that far, so that we can get rid of putting into the record Exhibits 646 to 668, inclusive, and substitute for them the stipulation which he has read into the record, plus Mr. Bromley's statement concerning board purchased from USG? Then we will approach these other exhibits when we get to them. We can at least save this much.

Mr. Knuff: Yes, we can accept that.

Mr. Bromley: Of course, my stipulation did not mean that USG had sold all the licensees. I do not believe that is the fact. All I mean is that some board has been purchased and sold, by some of these defendants from some other defendants—I don't know how much or whom.

Mr. Steffen: I might make a statement in that connection, if I may.

Justice Stephens: Surely.

Mr. Steffen: We asked Mr. Bromley about two or three weeks ago—I am not sure of the date—to supply us with the figures indicating how much board, how much lath, and how much metallized board, USG had sold to any of the licensees. And I think it was left to Mr. Collins to see what could be done about that. We at that time
6312 stated that we didn't want the matter necessarily precisely down to the cent, but that we did want to know substantially how much board USG had sold to each of the different companies.

Justice Jackson: That is all board, when you say "board", including metallized board?

Mr. Steffen: Yes, and perforated lath. And I think we are entitled to ask for that generally, and I would much prefer that than just a general statement that board has been sold.

On the other hand, we do not insist on a precise showing of the exact number of board feet and the exact number of dollars and cents.

Mr. Bromley: You told us that we could find that on our ledgers, and we went to our ledgers and of course we can not find it. There is no way we can get it without going all over the millions of invoices. That we have told you, and that is the fact.

I am willing to make any reasonable guess at it, but it can only be a guess.

Mr. Steffen: That is the first time you have told us that. Will you make a reasonable guess as to the amount of board, ordinary wallboard, perforated lath, and metallized board, that has been sold by USG to its licensees? I think we are entitled to that as a matter of establishing the size of the inter-company purchases that have been made.

6313 Justice Jackson: If they can give it to you.

Mr. Steffen: If it can be obtained. If they want to offer a stipulation as to amounts, we would be very glad to consider it.

Justice Garrett: You are carrying us away from the immediate thing that is before us, Mr. Steffen.

Mr. Steffen: That is correct, Your Honor.

Justice Garrett: The immediate thing that is before us is a proposal to stipulate certain matters by Mr. Keber. Mr. Knuff has indicated his unwillingness to accept that except upon certain conditions. One of the conditions Mr. Keber states he can't agree to, because he doesn't know.

Now it just seems to me—and of course I speak only for myself, and without conference with my colleagues—that that matter ought to be disposed of, that Mr. Knuff should say yes or no.

If he says no, then clearly, as has been indicated, we will rule out every one of these exhibits. If he does accept it, we will have that much disposed of.

Mr. Steffen: I think, Your Honor, that he said yes and did accept it, and I was going on to another matter which I thought had been raised by Mr. Bromley's general statement. I wanted to make sure that it was not to be in substitution—

Justice Garrett: (Interposing) He put a condi-
6314 tion in there that Mr. Bromley should agree to something, which Mr. Bromley did agree to.

May I understand, Mr. Bromley—you agreed that royalties had been paid to the USG by Certain-teed on all board manufactured by Certain-teed under the licenses granted by USG?

Mr. Bromley: Yes, Your Honor.

Justice Garrett: Did you agree that it had been paid on all board purchased by Certain-teed and resold?

Mr. Bromley: No.

Justice Garrett: I didn't think you did, but I wanted to clearly understand that.

Justice Jackson: There is no contention that it was.

Justice Stephens: The reason I wasn't pressing counsel further, Judge Garrett, was because my understanding was that Mr. Knuff had not reached the position where he could quite accept Mr. Keber's offered stipulation, because it did not include the agreement which he wanted made that this board had been purchased from USG. Mr. Keber said he didn't know where it had been purchased, and therefore couldn't make any statement concerning that. So I thought the stipulation was not accepted. But if the stipulation as read into the record by Mr. Keber is now accepted by the Government, then we can get rid of 646 to 668. The only alternative, as we see it—as my colleague, Judge Garrett,

has stated—is that we think, under the rules of evi-
6315 dence, the second, third and fourth pages of Exhibits 646 to 662, which were the ones we were considering this morning in that aspect, have not been identified; and that since page 1 of each exhibit referred to attachments that were not identified, page 1 couldn't come in. Therefore, there would seem to be no alternative to the Government except to accept this stipulation for what value it is to the Government, or else re-serve these exhibits in complete, attached form, and attempt to get an admission, or call Mr. Krug and have the witness identify all of these, if they really amount to anything.

What we are all trying to do, I am sure, is cooperate in the interest of saving time and expense of all persons concerned. I am a little confused at this moment as to just what state the asserted stipulation is in, because I am not quite sure, in view of Mr. Steffen's statement and Mr. Knuff's statement, whether the stipulation is accepted or not.

Mr. Knuff: It is accepted.

Mr. Keber: As it was read into the record?

Mr. Knuff: As it was read into the record.

Justice Stephens: Very well.

Mr. Keber: Now I had assumed that the stipulation that had been prepared met, on all fours, the thing that Mr. Knuff was most interested in, and when I offered to so stipulate I should like to have it understood that I
6316 was taking a chance as to the accuracy of the facts, but with a sincere desire to reduce the size of the record and to meet the suggestion that the Court made this morning; and that is why I have some little difficulty, although I am somewhat new to this atmosphere here, in understanding Mr. Knuff's statement about what Mr. Adams may or may not do with respect to other exhibits. It seems to me that if I had insisted upon the objection that I made this morning,—and as Judge Garrett indicates, and as I believe the Presiding Judge did indicate—I could have kept this whole matter out of evidence. I have some difficulty, therefore, in understanding Mr. Knuff's attitude.

Justice Stephens: Now, Mr. Knuff, we want the Government to be satisfied, as well as the defendants, that its rights are being properly protected. Are you satisfied with the stipulation so far as the "seconds" item is concerned, as well as with respect to the other?

Mr. Knuff: Yes.

Justice Stephens: Very well. Then we thank you both, gentlemen, for your efforts to save time and expense.

Exhibits 646 through 668, inclusive, may be withdrawn.

(Government's Exhibits Nos. 646 through 668, inclusive, were withdrawn.)

Mr. Knuff: That leaves us with 669 to 692 to be
6317 disposed of.

Justice Stephens: That is right. Those are the Watson papers, aren't they?

Mr. Knuff: That is right, Your Honor.

Justice Stephens: They seem to be in a somewhat different category. They consist of an affidavit at the front and other papers following, which purport to have been attached. What do the admissions show with respect to that series of papers?

Mr. Knuff: What we asked Mr. Adams to admit there was that "The following statements, photostatic copies of which are attached hereto, made a part hereof, and marked Exhibits 41 through 64, were signed on behalf of Certain-teed Products Corporation by Benj. B. Watson."

Mr. Adams failed to answer that request.

I might say in connection with this that the only thing we served on Mr. Adams was page 1, that is, the affidavit itself, of each of the exhibits. We didn't serve the statements attached thereto.

If you have your Request for Admissions before you, it will begin at Exhibit 41.

Justice Jackson: That would be No. 3 in the Request?

Mr. Knuff: Yes, Your Honor.

Justice Stephens: Now what is your contention, and what is there before the Court?

Mr. Knuff: The offer of Exhibits 669 to 692, the
6318 offer in evidence.

Justice Stephens: That, in terms of the Admissions, is Exhibits—

Mr. Knuff: (Interposing) It is Item No. 3 on the Request for Admissions, and under No. 3 it includes Exhibits 41 to 64 of that item.

Justice Stephens: What do you have to say, Mr. Keber?

Mr. Keber: I object to the admission of these exhibits in evidence on the ground that no proper foundation has been laid for their receipt.

Reference has been made by Government counsel to the Request for Admissions. I presume he referred to para-

graph 3, and he said we did not respond thereto. That is correct, and the effect of that response, I take it, is that we have admitted that Benjamin B. Watson signed Exhibits 41 to 64—those are the exhibit numbers as contained in the Request for Admissions—on behalf of Certain-teed Products Corporation. That is the extent of our admission. And of course, that only goes to the papers that were attached to the notice to admit.

Justice Stephens: And those were the purported affidavits of Watson?

Mr. Keber: That is correct.

Now so far as those affidavits are concerned, they are obviously a certification, I suppose, of some other papers.

6319 Justice Stephens: Now read your answer. If we are going to have to rule on whether or not, under Rule 36, you have or have not made an admission, we will have to have it in the record. You were requested, under Request No. 3—

Mr. Keber: We just didn't do anything about No. 3, so we deemed that admitted.

Justice Stephens: I thought I read an answer here in which you stated you couldn't answer.

Mr. Keber: No, that was directed, if the Court pleases, to another item, to Item 4. Item 4 says "The statements of fact contained in Exhibits 1 through 64 are true."

Justice Stephens: I am sorry, I misunderstood this.

Mr. Keber: And our statements under sub-paragraph (c), refer to Item 4, and if you will look at the first page you will see: "1. As to Item 4, states"—and then we have various sub-paragraphs, and sub-paragraph (c), which deals with these particular exhibits, 41 through 60 it says, and it should be 41 through 64—

Justice Stephens: (Interposing) Where is your answer to Item 3?

Mr. Keber: We did not put in an answer to Item 3, intending thereby to concede Item 3.

Justice Stephens: I am sorry, I am badly confused.

Mr. Keber: Perhaps I can make that clear. As we understand the rules—

6320 Justice Stephens: (Interposing) Let's go back to the beginning, because I think the record is now in an unhappily confused condition. Let's start over again and clear both the record and the mind of the Presiding Judge.

You are offering now, as I understand it, Mr. Knuff, the exhibits which have been marked for Identification 669 through 692, inclusive?

Mr. Knuff: That is correct.

Justice Stephens: Which are the same as have been referred to in your Request for Admissions as Exhibits 41 to 64?

Mr. Knuff: Yes.

Justice Stephens: Now your Request for Admissions was as follows:

"Plaintiff, United States of America, requests the defendant, Certain-teed Products Corporation, within ten days after service of this request, to make the following admissions for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial:

• • •

"3. The following statements, photostatic copies of which are attached hereto, made a part hereof, and marked Exhibits 41 through 64, were signed on behalf of Certain-teed Products Corporation by Benj. B. Watson,"

6321 Now you say that 41 through 64, which is 24 exhibits, is the same as 669 to 692, inclusive; is that right?

Mr. Knuff: It is the same as the first pages of 669 to 692, inclusive.

Justice Stephens: That is what I mean, the first pages of 669 to 692.

Mr. Knuff: Yes.

Justice Stephens: Now your answer, Mr. Keber—you made no answer at all, you simply stood silent, did you, as to Item No. 3?

Mr. Keber: Exactly.

Justice Stephens: Intending thereby to do what?

Mr. Keber: Intending thereby to concede that Exhibits 41 through 64, or Exhibits 669 through 692—that is, the first pages thereof—were signed on behalf of Certain-teed Products Corporation by Benjamin B. Watson—and that is all.

Justice Stephens: There is no dispute, is there, between you that it was simply the first page, as these exhibits are now presented to us, to-wit, the affidavit of Watson, which was served upon you, and nothing else?

Mr. Keber: That is all that was presented to us.

Justice Stephens: Now you are objecting to the introduction of that page, as well as to the introduction of the attachments which are now presented to the Court—or what?

Mr. Keber: Yes, sir, I am objecting to both. I am
6322 objecting to it as an entire exhibit; and I am objecting to the first page—the first page specifically—on the basis that it violates the complete evidence rule. It purports to be a certification of something for which there has been no foundation laid whatever.

Justice Stephens: And the other pages, you are objecting to on the ground that they have not been identified?

Mr. Keber: That is right.

Justice Stephens: What is the position of the Government?

Mr. Knuff: The position of the Government, of course, is that we feel if we had called Mr. Watson to the witness stand and asked Mr. Watson if this was his signature, and he said that it was his signature, that that would have carried with it all the attachments that were connected to it at that time.

Justice Jackson: He would have to testify that those were the attachments, wouldn't he?

Mr. Knuff: I will say to the Court that we got them from USG, and I don't think that USG is going to say that they weren't attached at the time.

Justice Jackson: I know, but Certain-teed is the objector right now.

Mr. Knuff: They were obtained from USG, gotten from
6323 their files, and we took them apart for the purpose of photostating them; and we only served the first page on the defendant Certain-teed simply because we felt, and still feel, that that was sufficient to carry with it the attachment of it as a whole.

Mr. Keber: I don't understand that last part of it. If it was on the basis of economy—and I advert to that because I understood that to be one of Mr. Knuff's reasons—copies have now been made, and why wouldn't it have been just as easy to have made an additional copy to serve with the Request for Admissions?

Justice Stephens: Apart from that, if you had Watson on the witness stand and asked him to identify the first page of these exhibits and identify his signature thereon, and he did, but the other pages were not then attached, we couldn't rule, even if he was here in the court room, that that identified the pages later attached, and you are in no

better position in respect of your service under Rule 36—

Mr. Knuff: (Interposing) These pages were attached, Your Honor.

Justice Stephens: Not when they were submitted to Certain-teed.

Mr. Knuff: No.

Justice Stephens: We understand that nothing was served upon the defendant Certain-teed, in this group of exhibits, except the purported affidavit of Watson,
6324 with nothing attached to it.

Mr. Knuff: That is right.

Justice Stephens: We think the standing silent of Certain-teed under Rule 36 does not carry with it a sufficient identification of the attachments which are now attached to these affidavits, to bring them into evidence.

All you admitted, Mr. Keber, was that Watson had signed those affidavits which were served upon you, in behalf of Certain-teed. That is right, isn't it?

Mr. Keber: That is right.

Justice Stephens: That is your contention?

Mr. Keber: Yes.

Justice Stephens: And you contend that, now that you are confronted in the court room with certain attachments, you have a right to object to the competency of both the affidavit as identified by your silence, and to the attachments, because the affidavit itself is incomplete, on its face, since it refers to attachments which you hadn't seen at the time these first pages were served upon you, and the attachments can't come into evidence now because they are not identified?

Mr. Keber: Exactly.

Justice Stephens: We don't see any escape from that, Mr. Knuff.

Where is Mr. Watson?

6325 Mr. Knuff: I don't know where he is.

What we will do is just serve these over, that is all.

(Discussion off the record.)

Justice Stephens: For the time being, we reject the offer of Exhibits 669 to 692, inclusive, with leave to the Government to re-offer them if it can furnish better identification or foundation for them.

Mr. Johnston: If the Court please, before we get too far away from it, I would like the record to show that that stipulation is not binding in any way upon Texas or Gloyd.

Justice Stephens: The Court doesn't construe it as binding upon anyone but the persons who made it.

We will take a recess of five minutes at this time.

(Thereupon, a short recess was taken, after which the trial was resumed as follows:)

Mr. Knuff: We would like at this time to have marked for Identification Government's Exhibit 693, the same being a letter dated September 11, 1931, addressed to Mr. C. Henning, and signed M. H. Baker, President.

(The document referred to was marked as Government's Exhibit No. 693 for Identification.)

Mr. Finck: Will you please give me the number of the exhibit that you had marked on the one you sent?

Mr. Knuff: Exhibit No. 5, Mr. Finck.

6326 Mr. Finck: Thank you.

(Discussion off the record.)

Justice Garrett: Now National admitted to a lot of these exhibits. I don't remember now which ones. They are all set out in the answer. Is it necessary to go through all of those that they admitted? Couldn't you give them to us in a bunch? Or is there some question, was there a string tied to their admission in any way, Mr. Finck?

Mr. Finck: Only as to what was marked originally No. 5. There we do not admit the writing on the margin.

Justice Stephens: This is what is described, in terms of the Request for Admissions, as Exhibit 5, isn't it?

Mr. Knuff: That is right.

Justice Stephens: And it is covered by paragraph 4 of the answer, is it?

Mr. Knuff: Yes, Your Honor.

Justice Stephens: Let me see what the request was.

Mr. Knuff: The request was:

"M. H. Baker, president of National Gypsum Company, on or about September 11, 1931, sent a letter to C. Henning, United States Gypsum Company, Chicago, Illinois. A photostatic copy of said letter is attached hereto, made a part hereof, and marked Exhibit 5."

Justice Stephens: That is Item 5 that you are reading from?

6327 Mr. Knuff: That is right, item 5 of our request.

The answer is contained in Paragraph 4 of National's answer, and it reads as follows:

"4. Admit Item 5, except that the notations in writing on the letter did not appear on the original document which was sent."

In other words, the pencil notations did not appear on the original document, and we don't contend that they were on the original document, and we are not offering the writing that is on Exhibit 693.

However, in conjunction with Exhibit 693, I want to call your Honor's attention to Government's Exhibit No. 35, page 502 under the heading of "Buffalo", which appears about an inch and a half from the bottom of the page. There you will notice the words, "Erie, Niagara, Orleans, Genessee, Monroe Counties, New York".

Now the bulletin immediately preceding the bulletin of September 18, 1931, which is page 502 of Government's Exhibit 35, is the bulletin of June 27, 1931, which is Government's Exhibit 35 at page 504, and under the subject or heading "Buffalo", at the bottom of the page, you will find that the counties of Niagara and Erie are mentioned.

I call your Honor's attention to that in view of the writing that is on the bottom of the page.

Justice Stephens: Are you offering Exhibit 693?

6328 Mr. Knuff: Yes.

Justice Stephens: Is there any objection?

Mr. Finck: Yes, your Honor. I object to the exhibit as showing—that is, if anything is to be admitted in evidence, it should be admitted without the writing appearing in the margin. The Government has not asked us anything about the writing in the margin. If they had, we would have answered the question.

The only fact that they have sought admission of was the one as to whether or not this letter, dated so and so, was sent by Baker to Henning, and we have admitted that.

Now, as I understand it, that is received in evidence for that purpose only, as to that fact, not as to anything else that is on the letter.

Mr. Knuff: I am simply calling your Honor's attention to something that is already in evidence—

Justice Jackson: (Interposing) That might properly be done in a brief at the proper time, might it not?

Mr. Knuff: I think you ought to catch it at this time, so as to have the continuity.

Justice Stephens: If you are asking us, in admitting this exhibit, to give consideration to the long-hand nota-

tions, one of them at the left, opposite the first paragraph of the letter of September 11th, and one at the bottom, written crosswise, if you are trying to get those in
6329 evidence because of their circumstantial relation to something already in evidence, we will have to pass on that now.

Mr. Knuff: I am not offering that. I am calling your Honors' attention to Government Exhibit 35, first to page 504, where, under "Buffalo", you will find the counties of Niagara and Erie named; then to the next bulletin, the bulletin of September 18, 1931, which is Government's Exhibit 35 at page 502, under the heading, "Buffalo", where you will find the counties of Erie, Niagara, Orleans, Genessee and Monroe, named. And I call your Honors' attention to the fact that Rochester is in Monroe County, New York.

Mr. Finck: If the Court please, I object to the remarks of Government counsel and move that they be stricken from the record, because I am certainly not bound by any statements put on this letter, which letter I have admitted, where these statements were put on by other persons.

Justice Stephens: We don't think we have any right to consider, gentlemen of the Government, anything written on these letters in long-hand, in view of Mr. Finck's limited admission for National, unless you call someone to demonstrate who wrote it, and identify it.

In other words, what you are doing is offering this exhibit only for the typewritten portion, but you are, in addition to that, assuming to call our attention to something in handwriting on it because of its alleged
6330 relationship to previous exhibits, and yet we have no right to consider it because it isn't in evidence.

Mr. Knuff: I would be willing to have something placed over this handwriting, I am not offering this handwriting. I am offering it in connection with Government Exhibit No. 35, at page—

Justice Stephens: (Interposing) I think we all misunderstood you, Mr. Knuff. We thought you were trying to connect up the longhand-written material on Exhibit No. 693 with Exhibit 35, and that did not seem to us anything that we could properly consider. But if you are not doing that, that is over with.

Now, is there any other objection—if Exhibit No. 693 is offered, Mr. Finck, only for the typewritten portion to

which your admission relates, have you any other objection to its being admitted in evidence?

Mr. Finck: I have none.

Mr. Bromley: And the defendants, other than National, object to it as incompetent because not binding upon them, and also as immaterial and irrelevant to any issue in the case.

Justice Stephens: What is its relevance and materiality, Mr. Knuff?

Mr. Knuff: It is relevant and material because it shows on its face that what National was doing here was
6331 asking the United States Gypsum Company to have certain territory included in the bulletins. Now we say that that shows, on its face, that the bulletins were not just the bulletins of USG alone, but were the bulletins of USG, plus the suggestions from the rest of the industry.

Mr. Finck: If the Court please, just to amend my previous answer to your question, I would also like to note, for National and Baker, that we do object to this letter as irrelevant and immaterial, in addition to the objection I previously raised.

Mr. Bromley: In response to the proffer of Government counsel, I thought it was understood by everyone that under the license agreement between the licensor and the licensee, the licensor could not sell on any terms more favorable than he permitted his licensees to. If we were making a price for truckload deliveries someplace, and were not according that privilege to the licensees, the licensor had the obligation of according that same privilege. Here it was called to our attention under the terms of the license, as the licensee had the perfect right to do, and it was our obligation not to ourselves sell at any other or different or more favorable terms than those at which we permitted our licensees to sell.

The charge with respect to it is just the performance of our obligation under the license, as I see it.

6332 Justice Stephens: Now, as to relevance and materiality, we overrule the objection. We think the objection as just stated requires us at the present time to determine the exhibit's weight, or meaning, whereas we will have to determine that in the light of all the evidence; so that objection is overruled.

Now, the objection by Mr. Bromley, for USG and the other defendants, that it is not binding upon anyone other than National, has not yet been ruled upon.

I suppose that raises the usual point that the declaration of an alleged co-conspirator is not to be binding upon others until a conspiracy is shown aliunde, and it is shown to be in furtherance or execution of that conspiracy.

Mr. Bromley: I meant it to cover the point that we raised on Friday, that National's admission as to the authenticity of this document does not bind any of the defendants, other than National.

Justice Stephens: We ruled that that was correct, and this is not received as binding upon anyone but National, unless it should be, in some manner, shown to be in furtherance or execution of the conspiracy, and the conspiracy is shown aliunde the declaration.

Mr. Bromley: Of course, our position is that this type of admission, made in a courtroom, can never be connected up with the other defendants, even though there be
6333 prima facie evidence of a conspiracy adduced at some time in the future, because this is only National's admission here in the courtroom, that this is an authentic document, and not ours.

Mr. Johnston: If the Court please—

Justice Stephens: (Interposing) Just a minute, one at a time, Mr. Johnston. You are drawing a distinction, between the admission of authenticity, and the admission—

Mr. Bromley: (Interposing) —if any, in the document.

Justice Stephens: (Continuing) —if any, in the document.

Mr. Bromley: Yes.

Justice Stephens: Well, so far as the admission of authenticity is concerned, I should think that couldn't bind anyone except National.

Mr. Bromley: That is right, your Honor.

Justice Stephens: Unless my colleagues disagree with me, I would so rule, and do so rule.

As to the asserted admissions of the document, they are received subject to the usual reservation with respect to declarations of co-conspirators.

(Government's Exhibit No. 693 for identification was admitted in evidence for a limited purpose.)

Mr. Johnston: I just wanted to call the Court's
6334 attention to the fact that this group of exhibits, signed by Mr. Baker, in some instances, and by Mr. Burley in others, which latter ones we are coming to, so

I will direct my remarks to both of them that permitting these to go in under these circumstances denies us the right to examine these witnesses, and I understand the gentlemen are both alive, and one or both of them under subpoena, and why weren't they brought here so that they could be examined about these, and so we could cross-examine them?

I just don't understand the technique of the thing. I think it is manifestly unfair to offer to put these in and deny us the right to cross-examine.

Justice Stephens: Well, we are ruling that as far as their authenticity is concerned, the admission of authenticity does not bind you. Therefore the document isn't good as against you. That is the reason that ruling is made, that you have been denied the right of cross-examination by not producing these witnesses, and therefore the admission can only bind the person making it, to-wit, the admission of authenticity. How are you harmed, then?

Mr. Johnston: Not unless they attempt later to use these against us. If the record may show that under no circumstances could any of these exhibits, this one, for instance, and others similar, in any manner, bind Texas, then I am satisfied—whatever the other evidence may be.

6335 Justice Stephens: We have ruled clearly, we have just finished ruling, at Mr. Bromley's insistence, that so far as the admission of authenticity is concerned, this document does not bind anybody but National. So it isn't proved, it isn't identified, as against anybody but National.

Mr. Bromley: I think Mr. Johnston's difficulty may arise from the fact that I perhaps led your Honor to say that insofar as the admissions in this document, if any, are concerned, they might be considered as a declaration of a co-conspirator. I think Mr. Johnston feels, and I know I do, that if the Government adopts this technique of trying to put these papers in, based on the admission of the party who wrote them as to authenticity, that that means that they never thereafter can use the admission, if any in the document, as against anybody except, in this case, National.

That is the penalty that they incur for this type of procedure, and I think your Honor, in drawing the distinction that I attempted to make, between the admission of authenticity and the admission, if any, of fact in the document, did not mean to say that the admission, if any, in the

document, could ever become binding upon anybody, any more than the admission of authenticity could.

Justice Stephens: Not unless the authenticity is in some other manner established, so that there would be the
6336 right of cross-examination in respect of it.

Mr. Bromley: That is what I assumed you had in mind.

Justice Stephens: Perhaps the Court has been unduly cautious in continuing to reiterate this usual reservation, but it is my understanding that an admission is binding upon no one but the person admitting it, whether made in the courtroom or out of the courtroom, or where. The only admission we have here is an admission of authenticity of this document. Now that is binding upon National, and it therefore binds National so far as the contents of the document are concerned. It doesn't bind anyone else because it hasn't been admitted to be authentic in any manner which could bind anyone but National.

The hearsay rule is still operating, and an admission is an exception to the hearsay rule, but it is an exception only as against the person who makes the admission.

If the Government wishes to have the advantage of using these documents against defendants other than National, it ought to call Baker, Burley, and such other persons as wrote them, and put them on the witness stand.

Mr. Knuff: I would like at this time to offer in evidence Government's Exhibit No. 344, the same being a memorandum dated December 16, 1932, purporting to be signed by M. H. Baker, and addressed to R. F. Burley.

Justice Jackson: That has been offered before,
6337 hasn't it?

Mr. Knuff: It was offered in conjunction with Mr. Higgins' testimony when he was on the witness stand. We asked Mr. Higgins if he could identify the initials, E.B.B. at the top of the exhibit, and Mr. Higgins said he knew who those initials belonged to, but he couldn't tell whether they were in Mr. Biesinger's handwriting or not.

Justice Stephens: Is this covered by some admission, Mr. Knuff?

Mr. Knuff: Yes, it is Item No. 6 of our requests for admissions. That item reads as follows:

"6. M. H. Baker, president of National Gypsum Company, on or about December 16, 1932, sent an inter-office memorandum to R. F. Burley. A photostatic copy of said memo-

randum is attached hereto, made a part hereof, and marked Exhibit 6."

The answer of Mr. Finck concerning this, is contained in Paragraph 5, and reads as follows:

"5. Cannot truthfully either admit or deny that M. H. Baker, on or about December 16, 1932, sent an inter-office memorandum to R. F. Burley, referred to as Exhibit 6 in Government's Request for Admissions, for the reason that M. H. Baker does not recall writing the memorandum, nor does R. F. Burley recall receiving the same, and that a reading of the memorandum does not refresh the recollection of M. H. Baker and R. F. Burley that they have
6338 seen such exhibit, nor have either of them any knowledge of the meaning of the contents thereof. Defendant admits that said Exhibit was taken from the files of the National Gypsum Company, and that R. F. Burley, who was in charge of sales of the National Gypsum Company on December 16, 1932, can identify the initials in the upper right-hand corner, 'E.B.B.—Your file', as his writing."

Where you say the "upper right-hand corner" there, you mean the upper left-hand corner, do you not, Mr. Finck?

Mr. Finck: I will speak for myself.

If the Court please, we object to the admission of this, and we have so stated in our answer, that we cannot truthfully either admit or deny that this exhibit was communicated by Baker to Burley. That, in my opinion, is a denial. The rest of the answer is simply a statement of the reasons why we did not admit it. The admissions therein stated, I presume, are not admissible here.

If they want to call Baker or Mr. Burley to tell the story, then that will be evidence.

Justice Stephens: Are you offering Exhibit No. 344?

Mr. Knuff: Yes, your Honor.

Justice Stephens: Do you wish to be heard as to whether or not it is admissible in view of Rule 36, Mr. Knuff?

Mr. Knuff: Yes, I would like to be heard, your Honor, in this connection.

6339 We say now at this time that this exhibit is circumstantially identified by the matters that are contained in the answer to our request for admissions. That is, that this was taken from the file of National Gypsum Company; that the initials in the upper left-hand corner, "E.B.B.—your file" are in the handwriting of Mr. Burley.

Now, the Court has repeatedly said that that circumstantially identifies the document. They have said that in connection with some of the exhibits that Mr. C. O. Brown identified. He had his initials up there.

When you consider that this is on the letterhead of the National Gypsum Company, and when it was taken from their files, when it is admitted that the initials "E.B.B." are in Mr. Burley's handwriting, I think that that is circumstantially sufficient at this time to admit it in evidence. It is not denied at all that it was taken from their files, in fact it is admitted that it was taken from their files. It is not denied that Mr. Baker sent it, it is neither admitted nor denied.

Mr. Finck: If the Court please, this seems to be a roundabout way of getting the circumstantial evidence upon which this document may be admitted. The only admission that I make as, for instance, to the initials in the upper left-hand corner, is in the reason that I give for not being able to admit the authenticity of the document. I do not
6340 admit, under any circumstances, that Baker sent this memorandum to Burley, but I give as my reasons the various facts that I set forth in my answer.

Now, the facts that I set forth for my reasons certainly should not be taken now to circumstantially identify the document. If they want to identify the document any further, it seems to me they should call a witness.

Now these men, both Baker and Burley, have been shown this document; they know nothing about it; they say that the facts therein contained are not true; that these facts certainly did not happen; and they can't remember anything about it; they can't remember writing it; and they can't remember seeing it.

Justice Jackson: But Burley evidently received it.

Mr. Finck: Burley evidently marked it for filing.

Justice Jackson: Well, he received it or he couldn't have marked it.

Mr. Finck: Well, he doesn't remember it anyway, and I have gone just as far as I can in my reasons, and I am perfectly willing that this be admitted, subject to the conditions that I have set forth in my answer. That is all they could say.

Justice Stephens: You say you are willing it should be admitted, subject to the conditions set forth in Paragraph 5 of your answer?

6341 Mr. Finck: I would rather have Baker come here and testify and tell about it.

Mr. Knuff: Mr. Baker couldn't add anything to it, if what is said in the answer is correct, according to Mr. Finck. He says Baker or Burley do not remember anything about it—

Mr. Finck: (Interposing) They remember this about it, they remember that the statements of fact in this document, in the second paragraph particularly, are not so.

Mr. Knuff: That goes to the weight of the document, not to its admissibility.

Mr. Finck: That goes to the document itself.

(The Justices conferred.)

Justice Stephens: I think we have a disagreement here, although I am not sure what Judge Jackson's views are—

Justice Jackson: (Interposing) I will state my own views.

Justice Stephens: Judge Garrett and I are of the view that you haven't laid any foundation for admitting this proposed Exhibit 344.

Rule 36 says that the person upon whom the request for admissions is served must reply within a given time by, "a sworn statement either denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he cannot either truthfully admit or
6342 deny those matters."

By reading the whole of Paragraph 5 of National's answer, it seems to us that it is, in effect, a statement of why National cannot either truthfully admit or deny that M. H. Baker, on or about December 16, 1932, sent an inter-office memorandum to Burley, referred to as Exhibit 6 in the Government's request for admissions—and that is all that you asked to be admitted. You didn't ask for any admission concerning the handwriting which appears in the upper left-hand corner, and even the admission made is simply an admission as to what Mr. Burley can do by way of identifying these.

It isn't an admission that he does identify them.

So I am of the view, and I think Judge Garrett agrees with me, that there isn't any foundation laid under this Rule. Judge Jackson may have a different view.

Justice Jackson: I have, decidedly.

This is an inter-office memorandum between two officers of National, on their regular form. It is directed to R. F. Burley, and purports to have been sent by M. H. Baker.

I think that the ruling of the majority is just shaving the rules of evidence too fine. There is no question in my mind that the admission in its last line here, that Mr. Burley can identify, "E.B.B.—your file", as his handwriting, means that he wrote it. I can't put any other
6343 construction on it. He evidently routed it to Mr. E.B.B., whoever that was. He couldn't have done that without receiving it. Strangers aren't sending in these inter-office memoranda to Mr. Burley.

For the reasons I have just stated I think it should be admitted. As to its weight, I don't know.

I think my view is reasonable.

Mr. Finck: I want to be reasonable in this too. All I was asked to admit was whether Baker sent this inter-office memorandum to Burley. I couldn't do that. So therefore I had to give a reason for it. So really all I am doing here under the Rule is denying the request for the admission.

Justice Jackson: But you have gratuitously admitted, in effect, that Mr. Burley wrote, "E.B.B.—your file".

Mr. Finck: As one of my reasons for not being able to admit or deny it. I stated the full facts. It seems to me that I have gone as far as I can, although I do not admit the request which was made of me by the Government.

Justice Jackson: Well, the ruling is in, anyway.

Justice Garrett: Baker is a defendant in this case. He was not called upon for any admission here, was he, just Certain-teed?

Mr. Knuff: We call upon Mr. Baker's company, and Mr. Baker's company made the admission that Mr. Finck has just stated here. We didn't ask Certain-teed to admit
6344 something National did. Even if we had called Baker, according to the answer here, we wouldn't have gotten any more than we have already gotten. He says he doesn't remember the document. All I can say is that there have been quite a number of documents that have come in simply on that basis.

Take for instance a document with the initials, "A.W.", meaning Audenreid Whittemore, on them. Mr. Whittemore testified that he didn't remember the subject matter of the document, but that those were his initials.

Justice Stephens: Mr. Knuff, with respect to my col-

league's statement that the majority is cutting the rules of evidence too fine—

Justice Jackson: (Interposing) In this case.

Justice Stephens: (Continuing) I understand that that is exactly what you meant, and I take it entirely in good part—but in view of the fact that you have made that statement, I should like to state a little more just why this thing strikes me as it does.

You, Mr. Knuff, have either got to call Baker to identify this document, or else you have got to get an admission from the other side as to what it is. Now all you asked the other side to admit was that M. H. Baker, president of National Gypsum Company, on or about December 16, 1932, sent an inter-office memorandum to R. F. Burley, and you referred to a photostatic copy.

6345 Now your opponent did not admit that, and he gave reasons why he couldn't admit it. It seems to me that that is the end of it.

Justice Jackson: But he did make an admission that those initials were written by Burley, and that that is his handwriting. He didn't have to do that, but he did it.

Justice Stephens: I don't agree with my colleague. What the admission says is, that he can identify his initials, implying that if he were called to the witness stand he could identify them. I don't understand it to be an admission that he has identified them for the purpose of this case.

I think the purport of the majority ruling is that Rule 36 provides for an extra-judicial proceeding. We have nothing to do with it, on the Court, except to find out, after the requests for admissions have been made, and the replies brought in, after they are brought to our attention, whether or not such replies constitute admissions of what was sought to be admitted. And I think it clearly does not, in this instance.

Exhibit 344 is not received in evidence.

Mr. Knuff: I would like at this time to have marked for identification, Government's Exhibit 694.

6346 (The document referred to was marked Government's Exhibit No. 694 for identification.)

Mr. Knuff: This is a copy of a letter, dated March 22, 1935, addressed to Mr. Ed. H. Diegel, General Sales Manager, Ebsary Gypsum Company, and signed, "Vice President."

I would like at this time to offer Exhibit No. 694 in evidence.

In connection with this exhibit, we asked National, under Paragraph 8, to admit that:

"8. R. F. Burley, vice-president of National Gypsum Company, on or about March 22, 1935, sent a letter to Ed. H. Diegel, general sales manager, Ebsary Gypsum Company, New York City. A photostatic copy of said letter is attached hereto, made a part hereof, and marked Exhibit 8."

The answer of National is contained in Paragraph 6, which states,

"Admits 7, 8, 9", and so forth.

Justice Stephens: Is there any objection, Mr. Finck?

Mr. Finck: Only that it is irrelevant and immaterial, and not binding in any respect on the defendant Baker, because this request for admissions is not addressed to Baker.

Mr. Bromley: The defendants, other than National, object to it as incompetent because not binding upon them.

6347 Justice Stephens: What is the materiality and relevance of this to the issues in the case?

Mr. Knuff: On page 29 of the Complaint, in Paragraph 114, the last sentence states:

"Notwithstanding said facts, USG required its licensees to execute said agreements in order to be enabled to purchase metallized board for resale to dealers and consumers."

Now, if you will read the third paragraph of the letter, you will see that it says,

"Can't you get ahold of Mr. Ebsary—"

Justice Stephens: Just call our attention to it, because it is not in the record yet. What sentence is it?

Mr. Knuff: The second sentence in the third paragraph, beginning with the word, "Can't".

Justice Stephens: This purports to be signed by Burley of National, doesn't it? I mean it purports to have been sent by Burley of National.

Mr. Knuff: Yes, your Honor, to Mr. Diegel of the Ebsary Gypsum Company.

Justice Stephens: State what it is you intend to prove by the letter? We are in doubt about it. We don't quite

see--at least I don't, and I don't think my colleagues do—just what you intend to prove by it.

Mr. Knuff: Well, beginning with paragraph 133—

Justice Stephens: (Interposing) We have read
6348 paragraph 114 carefully, and we have read the letter carefully. Tell us what it is you intend to prove by the letter.

Mr. Knuff: What we said in Paragraph 114.

Justice Stephens: How does it tend to prove that? We are having trouble seeing the logical relation of that to the pleading.

Mr. Knuff: "Can't you get ahold of Mr. Ebsary and have him sign this license right away? Mr. Baker wants to work cooperatively with Mr. Ebsary on this so you will not be penalized when one of your customers want foil included in the car, but, as explained to you, we can't extend the 12½% discount until Mr. Ebsary signs the foil license."

Mr. Johnston: If the Court pleases, I think that ought to go out of the record. It is not in evidence and they should not be permitted to read it in, particularly after the Court has stated that it should not be read into the record.

Justice Stephens: It may go out if we do not admit the exhibit in evidence.

What I am trying to get you to do is not to read either the complaint or the exhibit to us, we have read both of those carefully two or three times. Just assume we know the contents of the complaint and the letter, and make an argument, if you care to, as to how the contents of the letter tend to prove the allegations of Paragraph 114. I
6349 don't see it yet. Maybe one of our difficulties is that at this state of the Government's case, perhaps inevitably, it is shifting from one issue to another, and we don't have in mind the background of the particular issue that you are now dealing with.

Mr. Knuff: In Paragraph 114 we said that at the time the foil license agreement was executed, none of the licensees, except National, intended to manufacture foil board, but that all of the licensees intended to purchase metallized board from USG or National, but notwithstanding the fact that none of the licensees intended to manufacture this board, USG nevertheless required the licensees to sign the foil license agreement, in spite of the fact that they did not intend to manufacture the foil board.

Now the letter of Mr. Burley says exactly that, that

we can't sell this to you at a discount until you sign the foil board license.

Justice Stephens: But what does that prove; how does that tend to prove that USG was trying to compel Ebsary to take a license? That is what puzzles me: It may show that Baker of National was trying to get Ebsary to take a license, but how does it show that USG was trying to get them to take a license?

Mr. Knuff: Economic pressure—they couldn't get the discount until they signed the license.

Justice Stephens: But the charge in Paragraph
6350 114 is that USG required its licensees to execute these agreements. How do Baker's overtures to Diegel, of Ebsary, prove anything against USG? I just don't understand it, that is all. Maybe I am slow about the point.

Justice Jackson: USG, of course, was the only licensor of this board, that these people were concerned in?

Mr. Knuff: That is right.

Justice Jackson: Of the foil license?

Mr. Knuff: Yes.

Justice Jackson: So if Ebsary was to sign the foil license, it would have to be the foil license of USG?

Mr. Knuff: That is right.

Justice Stephens: Yes, that is right, but the charge in the complaint is that it was under USG's compulsion that these licenses were being taken out.

Mr. Knuff: I think the connection will appear when we come to the letter of October 24, 1935.

Justice Stephens: That is farther down in the list of exhibits?

Mr. Knuff: Yes.

Justice Stephens: Well, we will have to suspend at this time until tomorrow morning.

(Whereupon, a recess was taken at 4:00 o'clock p.m. until 10:00 o'clock a.m., April 18, 1944.)

6351 IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF COLUMBIA

Civil Action No. 8017

UNITED STATES OF AMERICA,

Plaintiff,

v.

UNITED STATES GYPSUM COMPANY; NATIONAL GYPSUM COMPANY; CERTAIN-TEED PRODUCTS CORPORATION; THE CELOTEX CORPORATION; EBSARY GYPSUM COMPANY, INC.; NEWARK PLASTER COMPANY; SAMUEL M. GLOYD, doing business under the name of TEXAS CEMENT PLASTER COMPANY; SEWELL L. AVERY; OLIVER M. KNODE; MELVIN H. BAKER; BROR H. DAHLBERG; HENRY J. HARTLEY; FREDERICK G. EBSARY; and FREDERICK TOMKINS,

Defendants.

Seventh Floor,
Internal Revenue Building,
Washington, D. C.,
Tuesday, April 18, 1944.

The above-entitled cause came on for further hearing at 10:00 o'clock a.m., pursuant to adjournment, before Honorable Harold M. Stephens, Honorable Finis J. Garrett, and Honorable Joseph R. Jackson, sitting as the District Court of the United States for the District of Columbia.

APPEARANCES:

(Same as heretofore noted.)

6356 Justice Stephens: That is right.

At the adjournment, we were discussing the admissibility of proposed Exhibit—

Mr. Knuff: (Interposing) Before we come to that, I have something else I would like to speak about.

Mr. Keber: May I be heard for just a moment? I

don't know whether this is too late to do this, but yesterday in connection with the receipt of Exhibits 624 to 640, other defendants noted an objection as to their incompetency, as not binding upon them, not having been properly identified.

Now we represent, in addition to Certain-teed, Henry J. Hartley. The admission with respect to the Krug signature, and that it was signed on behalf of Certain-teed, was made only by Certain-teed in response to a request for admissions addressed only to Certain-teed, and therefore I presume that I should have moved at that time, or objected at that time to its competency against Henry J. Hartley, whom we also represent. If it is not too late, I should like to note that objection for the protection of Mr. Hartley.

Justice Stephens: That is, you are taking the same position that the defendants have taken with respect to these other exhibits, that the admission of the Krug signature is binding only upon the person who made the admission, to-wit, Certain-teed itself, as a company?

6357 Mr. Keber: Precisely.

Justice Stephens: Is there any objection to having that objection made now, Mr. Knuff?

Mr. Knuff: No.

Justice Stephens: That objection may be recorded, and it is sustained. The exhibit is received, as has already been stated, only as binding upon Certain-teed.

Mr. Keber: Thank you, sir.

I think the record reflects the fact that my stipulation yesterday was only on behalf of Certain-teed and not on behalf of Mr. Hartley. I should like to have that understood.

Justice Stephens: That may be understood.

Mr. Finck: If the Court please, the same condition exists with respect to Baker, in connection with the admissions that we are now making for National. If it is agreeable to the Court, I would like to have a continuing objection on behalf of Baker as to the competency of all these admissions.

Justice Stephens: I think you really are protected already, gentlemen, because the Court has ruled that an exhibit served and introduced under Rule 36 is binding, so far as the authenticity of the signature admitted is concerned, only upon the legal person making the admis-

sion. But you may record your objection on behalf
6358 of Baker, and it is ruled that the exhibits to which you have reference, Mr. Finck, are binding only upon the company.

Mr. Finck: Thank you.

Mr. Knuff: Yesterday afternoon, I thought that I understood the ruling of the Court on Exhibit 693. However, upon reading the transcript of the testimony last night, I find that I am not sure whether I do understand what Your Honors ruled yesterday.

Justice Stephens: Where is the ruling?

Mr. Knuff: The ruling starts on page 6621 of the transcript, and continues over to 6625.

I would like to say a few words, make a very brief statement, as to the Government's position with respect to—

Justice Stephens: (Interposing) Before you do that, let me refresh my recollection on the matter.

Mr. Knuff: It starts at line 14, page 6621. I believe that would be the logical place to start in order to get the background of the objection.

Justice Stephens: Yes, but to get my recollection refreshed, I will have to go back and see where the exhibit was first referred to.

If it wasn't made clear, the Court's correction on page 6621, in line 3, Mr. Grover, changing the word "its" to "the exhibit's", was the singular possessive of "ex-
6359 hibit", not the plural possessive. Judge Jackson misunderstood me on that, or else I didn't express myself clearly.

Now where do we start talking about Exhibit 693?

Mr. Oliver: It was marked at page 6614.

Justice Stephens: Very well, Mr. Knuff, proceed.

Mr. Knuff: In the Government's request for admissions directed to National, asking National to admit the authenticity of certain documents, in paragraph 5 of that request we asked National to admit that:

"M. H. Baker, president of National Gypsum Company, on or about September 11, 1931, sent a letter to C. Henning, United States Gypsum Company, Chicago, Illinois. A photostatic copy of said letter is attached hereto, made a part hereof, and marked Exhibit 5."

And we attached to that a copy of the letter, and we marked that as Exhibit No. 5.

In the answer of National to that request, National, in paragraph 4, states:

"Admits Item 5, except that the notations in writing on the letter did not appear on the original document which was sent."

The Government takes the position that there is no favored way of proving the authenticity of any document. We can prove the genuineness of a document in many ways.

First, we can call the writer of the document to
6360 the witness stand to admit that he wrote the document—

Justice Stephens: (Interposing) Are you talking about the longhand note on the letter?

Mr. Knuff: No, I am not. I am talking about the proving of the document.

Justice Jackson: All right, go ahead.

Mr. Knuff: We can prove by someone who knew Mr. Baker's handwriting that that is Mr. Baker's signature.

Or, we could call a handwriting expert and have the handwriting expert testify, from an examination of admitted original documents, that the signature appearing on Government's Exhibit 693 is the signature of Mr. Baker.

Or, we could prove it by calling someone to the witness stand who saw Mr. Baker sign this particular document. Perhaps in this case it would be Mildred Parker, who was Mr. Baker's secretary at that time.

Or, we can prove the genuineness of the document by an admission. That admission can take many forms. If the document was included in the pleadings, and the answer of the defendant admitted the genuineness of the document, that would prove the document.

On the other hand, if this document came up in another proceeding, and Mr. Baker had said in those other proceedings that "This is my signature", we could prove it in that way.

6361 Or, we can do what we did here and utilize Rule 36, which says that the opposing party can call upon the other party to admit the genuineness of the signature.

In other words, there isn't any standard way of proving the genuineness of a document. What we are interested in is the genuineness of the document, its authenticity. We are not interested in, I take it, the manner in which we prove it. If we prove that this is a genuine document, irrespective of how we prove it, then that is an accredited

document and that document should be considered as a proven document, just like any other document.

In other words, there are no degrees of credibility to a document. If we prove a document one way, by calling the writer of the document, the document could be certainly admitted. If we prove the document in another way, not by calling the writer, not by calling any witness, it is still an accredited document. If it is an accredited document, it is entitled to all the attributes of a genuine document.

Now when we prove, as we have here, by the admission of the defendant National, that this is a genuine document, the document proves either an admission or a declaration, whatever is contained in the document. In this case we say that there is contained in this document an admission of a co-conspirator, and that admission, then, can be
6362 used against all the other co-conspirators. By adopting this rule, and by utilizing Rule 36, we do not—Mr. Bromley to the contrary notwithstanding—incur any penalty.

Mr. Bromley says, on page 6624, that we incur a penalty, that the contents of the document can not be considered as an admission of a co-conspirator. I say there is nothing in the rules that penalizes us because we use the rules. There is nothing in any of the cases that I have examined—and I think I have examined all the annotations that cover Rule 36—there is not anything in the annotated cases which says that because we have seen fit to prove the document in the way that we have done, we incur a penalty and thereafter we can not use what is in the letter as an admission or a declaration of a co-conspirator.

In other words, there are not degrees of utilization for this letter. This letter doesn't take a 1-A classification simply because we put a witness on the witness stand to prove it. It doesn't take a 4-F classification, and can't be used, simply because we prove it by an admission.

We think that we are entitled to have this letter, the contents of this letter, considered by the Court as an admission or a declaration of a co-conspirator. Now I think the ruling of the Court doesn't quite go that far. I think on page 6621, the ruling of the—

Justice Stephens: (Interposing) The Court will
6363 aid you by saying that it was the intention of the Presiding Judge to rule just to the contrary of what you assert.

Mr. Knuff: On page 6621, Judge Stephens says:

"We ruled that that was correct, and this is not received as binding upon anyone but National, unless it should be, in some manner, shown to be in furtherance or execution of the conspiracy, and the conspiracy is shown aliunde the declaration."

We think that that is a correct statement of the law. But when we come over to 6625, we find there that it can't be used as an admission against anyone except National.

Now we take the position that the admission by National authenticates the document. The document being authenticated, what is in the document then can be used as an admission or a declaration, whichever the document contains. If it is simply an admission like that they weren't selling seconds, then of course it is only an admission. If, on the other hand, it contains a declaration in futherance of the conspiracy—and we say that Exhibit 693 does contain that—then we contend that the admission contained in the exhibit becomes the declaration.

We would like, if Your Honor pleases, to have that ruling clarified.

Justice Stephens: Well, the ruling doesn't need clarifying, Mr. Knuff. Subject to the separately ex-
6364 pressed views of my colleagues, if they are moved by your argument, I will say this, for myself, and to protect your record, that the correction of the ruling made on page 6625, or the narrowing of the ruling, or the making more clear of the ruling on page 6625 as compared with page 6621, was because I thought that I ought, for myself and my colleagues, to express definitely a view which is just the contrary of the view that you are taking, and to rule that where you ask for the identification of a signature under Rule 36 and simply get an admission,—that is in this instance Baker signed the document in behalf of the company concerned, National—that admission of authenticity of the signature could bind no one but National.

Now I think, in the interest of time, I do not need to hear a reply. If my colleagues wish to hear a reply from the defendants on this, I, of course, want them to do so. But I think the difficulty with your position, Mr. Knuff, lies not in what the cases hold, but in the statute, the Act of June 19, 1934, Chapter 651, which passed the act enabling the Supreme Court to enunciate these rules. That says, in the first paragraph: "Said rules shall neither

abridge, enlarge nor modify the substantive rights of any litigant."

Now Rule 36 makes binding upon a party who makes an admission, that admission; but if the admission
6365 of a party is to be binding upon anyone other than the party, it is binding not because of rules of evidence, but because of rules of substantive law which make one man's act or admission or declaration, under some circumstances, binding upon another.

The admission made under Rule 36, so far as the party making it is concerned, gets away from the hearsay rule, but it doesn't get away from the hearsay rule so far as the right of cross-examination by other parties is concerned, as to the authenticity of that document; and it can't be made binding upon them as an admission because they didn't admit it. It can't be made binding upon them as direct proof, without cross-examination.

So I think the ruling was correct. But you are entitled to urge your views upon my colleagues. If they wish to hear from Mr. Bromley or the other defendants, I would be glad to have them do so.

Justice Jackson: I had thought that National admitted the authenticity of that document.

Mr. Knuff: It does.

Justice Jackson: I take that from what Mr. Bromley said on page 6621.

Now I was under a misapprehension, because my thought was that the ruling as announced by Justice Stephens, on page 6621, was in effect the final ruling of the
6366 Court on this exhibit. The ruling on page 6621 corresponds with my idea as to what the rule of evidence should be in this case.

If, for instance, anyone who is alleged to be a conspirator makes an admission, why, of course, that doesn't of itself bind any other co-conspirator unless there is some evidence to show that it is in furtherance of the conspiracy, and the conspiracy is proved by evidence aliunde.

Now I can't see any difference between that and the present situation, and therefore I must disagree with the ruling of my colleagues. I think it should be admitted for what it is worth.

Justice Stephens: I think, in fairness to my colleague, I ought to say—and it goes without saying that this is entirely in good part—that I think he loses sight of the fact, in this ruling, as he expresses himself, that we are

dealing here not with the usual situation of an admission or declaration of a co-conspirator, but we are dealing here with an admission of authenticity of a document; and there has been no proof, according to the rules of evidence or substantive law, either one, against any defendant except National, as to the authenticity of that document, because the admission of authenticity is an admission and under Rule 36 it binds only the party making it. The terms of the rule itself say that. It says "a party".

Do you wish to be heard, Mr. Bromley?

6367 Mr. Bromley: No, Your Honor.

Mr. Knuff: Answering Judge Stephens as to the binding effect on the parties, I think that there are degrees of conclusiveness of the binding effect of that admission. In so far as National is concerned, that almost amounts to an estoppel. They could not now come into Court and say that the document is not a genuine document. In so far as the other defendants are concerned, it is open to them to challenge the genuineness of that document. If they choose not to undertake to challenge the correctness of that document, then I think they are bound by it. It is not contended in this case, I do not believe—if so, I haven't so understood it—that Exhibit 693 is not a genuine document. The document was taken from the files of USG. Not a single defendant here questions the genuineness or the authenticity of this document.

Now if they want to question it, it is still open for every person, except National. As to National, we now contend that they are estopped. But the matter of binding the defendants is one of degree, not of kind. It is still open to the other defendants to challenge the authenticity of this document. We have shown prima facie that it is a genuine document.

Justice Stephens: Read me again, will you, the admission which you made, Mr. Finck, and the question

6368 which was put to you.

Mr. Finck: The question was—

Justice Stephens: (Interposing) I have the answer before me. Just read the question.

Mr. Finck: The request is No. 5:

"M. H. Baker, president of National Gypsum Company, on or about September 11, 1931, sent a letter to C. Hen-

ning, United States Gypsum Company, Chicago, Illinois. A photostatic copy of said letter is attached hereto, made a part hereof, and marked Exhibit 5."

Justice Stephens: Then the answer was:

"Admits Item 5, except that the notations in writing on the letter did not appear on the original document which was sent."

I think I have never been more clear, Mr. Knuff, about the correctness of a ruling, in the course of this case, than I am about this one. It is a fine point, but to me it is a perfectly clear point.

To illustrate my position—not to prolong the discussion further, because I think it is useless to do so—if Baker were called to the witness stand, and you asked him to identify this document and admit his signature and admit that he wrote it, and the other defendants therefore had an opportunity to cross-examine him and test his veracity and his accuracy under oath, on cross-examination, then
6369 the exhibit could be admitted in evidence for all that was in it. Both its authenticity and its contents would be binding on all proper persons, provided it was shown to be a declaration of a co-conspirator and the conspiracy was shown aliunde the declaration, and it was shown to be in furtherance or execution of the conspiracy.

But you are proceeding under Rule 36, and what you are really asking the Court to do is to permit you to get an admission from A, who is not on the witness stand, and therefore not subject to cross-examination, and make it binding upon B. I don't think the rules of substantive law or evidence, either one, permit that.

But the record may show your position on it, as it does. I know of nothing, I may add, in the law which recognizes categories of bindingness of admissions.

Mr. Knuff: I don't want to seem captious, but I am still at a loss to know what the ruling of the Court is. I understand what Judge Stephens' ruling is, and I understand what Judge Jackson's position is, but I don't understand yet what Judge Garrett's position is.

Justice Garrett: I concur with Justice Stephens.

Mr. Knuff: Now in connection with Exhibit 344, I want to call Your Honors' attention to a previous ruling, to which the ruling yesterday seems to be contrary.

I want to call Your Honors' attention to Govern-
6370 ment's Exhibit 226. The ruling on Government's Exhibit 226 appears at page 2016.

Justice Stephens: Where is the ruling on Exhibit 344, first? Let's get that in mind.

Mr. Knuff: The ruling on Exhibit 344 was in yesterday's transcript, and it was rejected. The ruling is on page 6630, beginning at line 18, I believe:

"Justice Stephens: Judge Garrett and I are of the view that you haven't laid any foundation for admitting this proposed Exhibit 344."

Justice Stephens: I will have to go back, to refresh my recollection on that.

You gentlemen will have to bear with me if I seem a little slow on the uptake this morning. When I got home last night, prepared to read the record in this case, I found an emergency matter from the Court of Appeals which occupied me, together with these other items, until a quarter of two this morning.

Where do we start ruling on Exhibit 344, Mr. Knuff? Apparently it is at page 6625. Now let me refresh my recollection.

Mr. Knuff: Line 21, on page 6625.

Justice Stephens: Yes. Just let me read it, now.

(Transcript examined by the Court.)

Justice Stephens: I think we have this in mind now.

6371 Mr. Knuff: Now I direct your Honors' attention to Government's Exhibit 226. It is a memorandum, dated June 4, 1929; it was written by George M. Brown, and it has to do with matters that are connected with this case.

That memorandum was identified by Claude O. Brown, not by George M. Brown. Claude Brown was placed on the witness stand, and, on page 2016, the following appears:

"By Mr. Steffen:

"Q. I would ask you, Mr. Brown, whether you are familiar with the writing at the top of the memorandum, the word 'Whittemore'? A. I would say that was his writing.

"Q. Is that Mr. Whittemore's writing, 'Looks OK to me'? A. 'Looks OK to me' is Whittemore's writing.

"Q. And the initials 'AW' are also his? A. Yes.

"Q. Do you know who wrote 'Whittemore', which is scratched out, at the top? A. I think Mr. Brown wrote it.

"Q. That would be Mr. George M. Brown? A. Yes, sir.

"Q. Do you recall having seen the memorandum? A. No, sir.

"Mr. Steffen: We offer Government's Exhibit 226 in evidence.

6372 "I will point out to your Honors that the Item No. X279 indicates that it was taken from the files of the Certain-teed Company. The initials 'AW' are the initials of a Vice President of the company, who says that it looks OK to him. The writing 'Whittemore' is identified as being George M. Brown's writing. That is, he addressed it, apparently, to Mr. Whittemore, and Mr. Whittemore acknowledged it.

"Mr. Adams: May I ask a question?

"Justice Stephens: Yes.

"Mr. Adams: Do you know who prepared this memorandum?

"The Witness: No, sir.

"Mr. Adams: I object on the ground that there is no proper foundation.

"Justice Stephens: The objection is overruled"—

Justice Stephens: (Interposing) How many pages of this do you propose to read, Mr. Knuff?

Mr. Knuff: I am practically through.

Justice Stephens: I was going to say that we could read it and save time.

Mr. Knuff: I will be through when I read your Honor's ruling.

"Justice Stephens: The objection is overruled. We think it has been sufficiently identified. It may be admitted in evidence, subject to the usual reservation as to declarations of alleged co-conspirators."

6373 Now, in that case, we had Mr. Claude Brown identify, not his own handwriting, but the handwriting of someone else. He had never seen the document as far as the record goes, at least he did not recall seeing it. Now in connection with Government's Exhibit 344, we have a much stronger case. We have here a document that admittedly has, in the upper left-hand corner of that document, the initials, "E.B.B." in the handwriting of Mr. Burley, the

person to whom the document was sent. That is admitted. It is admitted that those initials, "E.B.B.", are in Burley's handwriting.

Now the defendant National has said that they cannot say that this was sent by Mr. Baker. They also say that this is Mr. Burley's handwriting at the top. It seems to me that they have taken an inconsistent position. If the document was received by the person to whom it was addressed, it must, of necessity, have been sent, and it was received by the person to whom it was sent, because the person to whom it was sent says, "Those initials, E.B.B., are in my handwriting."

Now we say that this document is identified and is entitled to come in as an exhibit in this case the same as Government's Exhibit 226, and we ask your Honors to reconsider, in the light of your ruling on 226, your action of yesterday afternoon on Exhibit 344.

Mr. Finck: If the Court please, I can only restate
6374 what I said yesterday, that we were asked by the Government to admit that M. H. Baker, on or about December 16, 1932, sent an inter-office communication or memorandum to R. F. Burley.

Now I cannot admit that, and under the Rule I have a right to either admit it or deny it, or state that I cannot truthfully either admit or deny it. That is what I have done. If I say that I cannot either truthfully admit or deny, then I must give a reason, and I follow with these reasons in which I state certain facts.

I did not want to make any admissions. If necessary, even now I think I could withdraw my answer and deny it, not admit it at all. I have done that, practically, in the way I have answered the request. Now I think, under the Rule, we have not made the admission sought, and therefore that this document should not be admitted in evidence.

Justice Stephens: Well, it is my view, Mr. Knuff, that nothing new has been presented. I had in mind, at the time I made my ruling yesterday, in which Judge Garrett concurred, some previous rulings. In fact, I think you referred to some of them, at least impliedly. I don't think the two rulings are inconsistent in view of the nature of Mr. Finck's answer to your request for admissions.

So far as I am concerned, the ruling will stand with respect to Exhibit 344.

Justice Garrett: I concur.

6375 Justice Stephens: Judge Jackson may wish to express himself differently.

Justice Jackson: I have already done that.

Justice Stephens: He disagreed with us yesterday, and I assume his position is the same.

Justice Jackson: Yes, I am disagreeing with you now also but I expressed myself as to that yesterday.

Justice Stephens: I feel constrained to say—and I think I speak for my colleagues, although I will be glad to have them express themselves separately if they disagree with me—that I really think the Government ought not to expect to reargue rulings when they have been carefully made.

So far as I can see the argument made this morning, made with respect to Exhibit 693, presented absolutely nothing new over what was heard yesterday, and it seems to me that the argument as to 344, did not.

I fear, perhaps, that the Presiding Judge has been at fault in this case and has left the Government—because of the anxiety of the Presiding Judge to be very careful and consistent in his rulings, and give counsel for the Government full opportunity to present a case which the Court recognizes is difficult to prove because of the circumstantial character of it, every opportunity that it properly should have to present its case—gain the impression
6376 that the Court is willing to permit invasion and invasion and invasion of its rulings, and reargument and reargument and reargument of matters which it has very carefully and thoughtfully and conscientiously considered.

The theory of a trial is that both sides shall be given full opportunity to express themselves and say everything they need to say, to convince the Court that a ruling ought to be one way or the other—but that that should be the end of it.

It does seem to me, gentlemen for the Government, that you go beyond what ought to be the proper limit of the Court's patience and the Court's discretion. You argue these matters very carefully, to the best of your ability; we hear argument on both sides; the Judges confer and then make a considered and careful ruling—and if it is adverse to the Government, the Government seems to feel that it has a right to reargue the whole thing all over again.

I confess that I am getting to the end of my patience, and I think close to the end of a proper exercise of discretion in permitting the Government to take so much time in these matters.

We were going to take, as I understood from the Government's promise, another few days to finish the Govern-

ment's case. But it looks to me, if we have got to go through this sort of thing every day, that we will be
6377 here another month or six weeks, and I really think it ought to be stopped.

Mr. Steffen: May I say just a word, your Honor?

Justice Stephens: Yes.

Mr. Steffen: I want to say, for the Government, that we are very appreciative of the patience with which the Court has listened to the arguments of the Government, and we felt that we were not pressing an argument unless we were presenting something that had some substance to it.

I think your Honor's remarks could be equally directed to the defendants, as I feel you have been equally patient with them.

This matter of Exhibit 693 was first argued on Friday afternoon when I was not here. It was then argued again yesterday, and the decision on Exhibit 693 was not, to my mind, entirely clear.

Moreover, it covered a matter that will run through all of these exhibits, and as respects that argument, I felt that we should have a fairly clear hearing, and while it did take the better part of a half an hour, I think that it was important, from the Government's viewpoint, to get that carefully presented.

As to Exhibit 344, I think that we don't have as strong a case at all on that; but on Exhibit 693 I thought we did have a very important addition to present; and I say that so far as finishing the Government's case is concern-
6378 ed, we hope, as soon as we can get these requests for admissions presented, to be then perfectly free to close the case, and I don't see any reason why that shouldn't be done in the next day or so.

Justice Stephens: Well, the Court is not speaking in censure, gentlemen. The Court realizes that you are properly zealous in the presentation of your case, and the Court realizes that there have been some rearguments by some of the defendants' counsel, one of whom is absent today, so I will not comment on him in his absence. He has also been very insistent upon rearguments and reargu-ments.

What I say is in good nature and in good part, and in the interest of saving time.

When we get a decision made, let's abide it, and if we don't like it, the proper recourse of the party against whom the decision is made is to appeal.

We will take our morning recess.

(Whereupon a five-minute recess was taken, after which the trial was resumed as follows:)

Mr. Knuff: May it please the Court, when the Court adjourned yesterday afternoon, I believe I had offered in evidence Government's Exhibit No. 694, which would be Exhibit No. 8 in your group of exhibits. It had been marked for identification as Exhibit No. 694.

It is a copy of a letter, dated March 22, 1935, ad-
6379 dressed to Mr. Ed. H. Diegel, and was signed "Vice President".

This is a carbon copy of the original, and under the admissions of National, in Paragraph 6, it is admitted to be a photostat of an unsigned carbon copy of the document which was sent or received as stated therein.

Apropos of Exhibit 694, I want to call your Honor's attention to Government Exhibit 548, which was offered and received in evidence—

Justice Stephens: (Interposing) Are you citing Stephens against Stephens again? (Laughter)

Mr. Knuff: No, your Honor.

The attachment to Exhibit 548 was dated March 18th. This exhibit is dated March 22, 1935. Exhibits 548 and 694 deal with the same subject matter. We are not arguing relevancy at all.

Justice Stephens: I think you are entitled to argue relevancy.

Mr. Knuff: I mean at this particular time we are not.

Justice Stephens: We hadn't finished the argument on relevancy last night, as I recall.

Justice Jackson: What is the extent of the admission here, that this is a photostat of an unsigned carbon copy which was sent or received as stated in your request?

Mr. Knuff: That is right. The original, of course, I take it from this admission, was sent to Mr. Diegel of the
6380 Ebsary Gypsum Company. We don't have the original, but we do have the carbon.

But as I say, I understand from the admission here that there is no question raised by National that the original was sent to Ebsary.

Justice Stephens: The only question I had, Mr. Knuff, about the admissibility of Exhibit 694, was whether it tended to prove Paragraph 114 of the complaint, and I

wasn't clear on that when we were finishing the argument last night.

Mr. Knuff: This is just one step in proving the allegations of Paragraph 114 of the complaint, and should be considered along with all the other evidence in the case.

Justice Stephens: Do the defendants wish to be heard with respect to it, any further?

Mr. Bromley: I don't believe there is anything to be added to the obvious comment to be made on the document which the Presiding Justice made at page 6638, yesterday: ". . . how does that tend to prove that USG was trying to compel Ebsary to take a license?"

Now, it seems to me that it doesn't tend to prove that at all, and therefore it can have no relevancy or materiality.

Justice Stephens: The only theory that occurred to me, Mr. Bromley, that it might come in on is this. I still am of the view that I expressed yesterday, that when you look at this exhibit alone it is difficult to see how it tends
6381 to prove what you offer it for, Mr. Knuff. But it may be that, connected with other evidence that you have as to the asserted action of USG in connection with National and other licensees, it may have some tendency to prove your theory.

On that theory that it may, in connection with other evidence, have some tendency to prove the allegations of Paragraph 114 of the complaint, we will admit it in evidence, subject to the right to move to strike it if there is no connecting evidence, and subject to the usual reservation with respect to declarations of alleged co-conspirators.

Mr. Bromley: Well, I think it should be admitted subject to a motion to strike, on the same terms as Exhibit 693 was admitted, and subject to the same limitations as applied to Exhibit 693, because again—

Justice Stephens: (Interposing) With respect to authenticity as well as the usual reservation?

Mr. Bromley: Yes, your Honor.

Justice Stephens: Both of those reservations or limitations upon the ruling are made, that it is admitted as binding, even if connected, only upon National.

Justice Jackson: Of course my opinion with respect to this is the same as it was with respect to Exhibit 693.

Justice Stephens: For the protection of the Government, and for the protection of the views of my col-
6382 league, Judge Jackson, there may be a showing in the record that there is a continuing ruling on the

part of the majority of the Court that exhibits which are identified under Rule 36, only bind the person who identifies them. That will give the Government a record on any other exhibits of that class.

(The document referred to, marked as Government's Exhibit No. 694, was received in evidence.)

Mr. Knuff: We would like to have marked at this time, if the Court pleases, Government's Exhibit No. 695 for identification, the same being a letter, or rather a carbon copy of a letter, dated August 27, 1935, addressed to Mr. George N. Lenci, and signed by the National Gypsum Company, "Vice President."

(The document referred to was marked as Government's Exhibit No. 695 for identification.)

Mr. Knuff: We would also like to have marked for identification as Government's Exhibit No. 696, an inter-office memorandum, dated October 7, 1935, directed to E. B. Biesinger, and having typed thereon the name "R. F. Burley".

(The document referred to was marked as Government's Exhibit No. 696 for identification.)

6383 Justice Jackson: How about the pencilled memorandum at the top of that exhibit, are you offering that too?

Mr. Knuff: No, your Honor, we are not.

Justice Jackson: That will save Mr. Finck an objection there.

Mr. Knuff: Yes.

I would also like to have marked as Government's Exhibit No. 697 for identification, a carbon copy of what is apparently an inter-office communication, or memorandum, dated October 24, 1935, addressed to F. G. Krumholz, and signed in typewriting R. F. Burley.

(The document referred to was marked as Government's Exhibit No. 697 for identification.),

Mr. Knuff: At this time we offer in evidence Government's Exhibits No. 695, 696 and 697.

In connection with that offer, we direct your Honors' attention to the requests for admissions, first to Request No. 10, that:

"National Gypsum Company, on or about August 27, 1935, sent a letter to George N. Lenci, Ebsary Gypsum Company, New York City. A photostatic copy of this letter is attached hereto, made a part hereof, and marked Exhibit 10."

We also call attention to Request No. 11, reading:

"R. F. Burley, Vice-President of National Gypsum
6384 Company, on or about October 7, 1935, sent an inter-office memorandum to E. B. Biesinger. A photostatic copy of said memorandum is attached hereto, made a part hereof, and marked Exhibit 11."

Also, we call attention to Request No. 12, reading as follows:

"R. F. Burley, Vice-President of National Gypsum Company, on or about October 24, 1935, sent an inter-office memorandum to F. G. Krumholz, National Gypsum Company, Chicago, Illinois. A photostatic copy of said memorandum is attached hereto, made a part hereof, and marked Exhibit 12."

The answer, submitted on behalf of National, in Paragraph 6, admits 10, 11 and 12, which are the three requests that I have just read, and I understand from this answer that although Exhibits 695 and 697 are photostats of carbons, the answer admits that the originals of 695 and 697—

Justice Jackson: How about 696?

Mr. Knuff: That apparently is an original.

(Continuing):—that the originals of 695 and 697 were sent to the persons to whom they were addressed.

Exhibit No. 696 apparently is an original document.

They are offered on the same theory that we offered Exhibit 694, and for the same purpose.

Mr. Finck: You are not offering the writing on Exhibit 696, are you?

6385 Mr. Knuff: No, we are not, Mr. Finck.

I might say that Mr. Finck in his answer—

Justice Jackson: (Interposing) Did you say that Exhibit No. 696 was an original?

Mr. Knuff: That is my understanding—Exhibit 696 apparently is an original.

Justice Jackson: That is what I understood you to say, and the copy of course that we have is a photostat of the original?

Mr. Knuff: Yes, you have the photostat of the original.
Justice Stephens: Let us read these now.

(After reading Exhibits 695, 696, and 697.)

Do the defendants wish to be heard?

Mr. Finck: If the Court please, as to Exhibit 695 and 697, I object to those as incompetent, irrelevant and immaterial as to Baker, that is, the request not having been made of Baker. I would just like to have the record show that objection for him.

As to National, the exhibits are objected to as irrelevant and immaterial.

I don't know what the purpose of the Government is in trying to have these exhibits admitted. They refer only to foil board and lath. Now there is no charge in the complaint that National ever tried to induce anyone to sign the metallized license agreement, and on the charges in
6386 the complaint, of course we take the same position as we have all through the trial, that National is expected from any charges in the complaint with respect to metallized board or lath.

Therefore, I cannot see how these letters can be material to the issues in the complaint as against National, and if they are only to be received as against National, I see no relevancy to them whatsoever.

Justice Stephens: As I remember it, the majority of the Court ruled, at the time of the reserved rulings, despite the phrasing of Paragraph 114 of the complaint with respect to National, that evidence concerning foil and National was admissible, did it not?

Mr. Finck: That is true, yes sir.

Justice Stephens: Well, consistently with that ruling of the majority of the Court, and with our previous rulings, these three exhibits will be received in evidence subject to the following limitation: That they are not binding except upon the persons actually making the admissions, under Rule 36.

Mr. Finck: As to Exhibit 696—

Justice Jackson: (Interposing) Of course, in all of these rulings, my stand will appear as dissenting from the ruling of the majority. My feeling is that they should be admitted for all purposes, for all defendants, if there is evidence, aliunde, to show that a conspiracy exists
6387 and that these documents were made in furtherance or execution of the conspiracy. I don't think that

I have to say that every time such a ruling is made by the majority of the Court.

Justice Stephens: Certainly not. The Presiding Judge does not continue to reiterate his dissents from the majority rulings on some of the reserved rulings. After a ruling has been made definitely, and established, by a majority of the Court, I assume that it becomes the law of the case, which we all follow, even though one of us might disagree with it, individually.

Now what do you say as to Exhibit 696, Mr. Finck?

Mr. Finck: I object to that as incompetent, irrelevant and immaterial, as to both National and Baker.

(The Judges conferred.)

Justice Stephens: Pardon me, what do you say as to Exhibit No. 696, Mr. Finck?

Mr. Finck: I presume all these are offered without the pencilled notations.

Justice Stephens: But do you make a different objection with respect to Exhibit 696 than you do with respect to Exhibits 695 and 697?

Mr. Finck: Yes, your Honor.

Justice Stephens: In other words, you raise no question as to their binding effect upon Baker?

6388 Mr. Finck: Oh, yes, I raise the same objection with respect to Baker.

Justice Jackson: I thought you said you objected as to Hartley, didn't you, because he hadn't been served?

Mr. Finck: No, your Honor, you must have misunderstood me.

Mr. Keber: We represent Hartley, Judge Jackson, and I mentioned him this morning in connection with another exhibit. We represent him as an officer of Certain-teed Products.

Mr. Finck: Of course no requests for admissions were made of Baker.

Justice Jackson: Well, the ruling seems to be sufficiently clear so that he is not bound. I agree with that.

Mr. Finck: I think so.

Justice Stephens: I don't see how Judge Jackson can agree with it, in fairness to him.

Justice Jackson: He wasn't served, and this can't bind him at the present time. It doesn't bind anybody but National. But if, on the whole record, a conspiracy is shown, and these documents here have been written, in the

opinion of the Court, in furtherance of the conspiracy, then of course they will bind everybody. That is what I meant.

Justice Stephens: Very well, I was just trying to save you from an inconsistency with yourself.

6389 Justice Jackson: Thank you, sir.

Justice Stephens: Exhibits 695, 696 and 697 are received in evidence. The objections as to relevancy and materiality are overruled. So far as the ruling of the majority of the Court is concerned, Judge Garrett and myself rule that they can bind only those persons—and I use the word "persons" in the legal sense—who were served under Rule 36, and made an actual admission with respect to the documents. That would exclude them as binding upon Baker or upon any other defendant.

(The documents referred to, marked Government's Exhibits Nos. 695, 696 and 697, respectively, were received in evidence.)

Mr. Knuff: I would like at this time to have marked for identification Government's Exhibit No. 698, the same being a carbon copy of a letter, dated October 24, 1935, addressed to Mr. H. E. Chism, and signed National Gypsum Company, "Vice President".

(The document referred to, was marked as Government's Exhibit No. 698 for Identification.)

Mr. Knuff: In connection with this exhibit, I direct your Honors' attention to Paragraph 13 of the Request for Admissions.

6390 Justice Stephens: This is a request directed to whom, to Texas?

Mr. Knuff: No, your Honor, to National.

Under Paragraph 13 of the request, National was requested to admit that:

"National Gypsum Company, on or about October 24, 1935, sent a letter to H. E. Chism, Texas Cement Plaster Company, Oklahoma City, Oklahoma. A photostatic copy of said letter is attached hereto, made a part hereof, and marked Exhibit 13."

The answer of National appears in Paragraph 7, and that answer is:

"Cannot truthfully either admit or deny that the defendant, on or about October 24, 1935, sent a letter to H. E.

Chism, referred to as Exhibit 13 in Government's request for admissions, although the copy of which said Exhibit 13 is a photostat, came from the files of the defendant and was returned to the Government under subpoena. No persons now associated with the defendant, National Gypsum Company, can identify the document."

I do not place any force on my request for admissions, nor the answer of the defendant under Paragraph 7.

I offer this now as being circumstantially identified because of what appears on Government's Exhibit 697. Government's Exhibit No. 697 is dated October 24, 1935.

6391 Government's Exhibit 698 is dated October 24, 1935.

Government's Exhibit No. 697 has to do with the sale of foil board to the Texas Cement Plaster Company. Government's Exhibit 698, in the first sentence, says:

"Note attached correspondence with Texas Cement Plaster Company."

On Government's Exhibit 697 there appears the notation thereon, at the top, "3091", which was placed on the carbon copy of that letter by National at the time they turned Exhibit No. 697 over to the Government.

At the top of Exhibit 698 the Court will notice that there appears the number, "3092", which indicates that 3092 follows 3091.

So I say that in view of the circumstances connected with other previously admitted documents, this document is circumstantially identified as being a document that was sent to the Texas Cement Plaster Company by National, and on that basis we offer the document as being circumstantially identified.

Justice Stephens: Let us read it, please.

(After reading Exhibit No. 698): I misunderstood you, I guess, at one point. I thought you were offering Exhibit 698 as something received from Texas, rather than as something sent to Texas.

Mr. Knuff: What we have here was received from

6392 the National Gypsum Company. The original of that letter apparently was sent to Texas. We received Exhibit No. 698 from the files of the National Gypsum Company.

Justice Stephens: I understood that, but I thought that you said that it was something that had been received by National from Texas; but on its face, it appears to have been something sent by National to Texas.

Is there any objection to this, Mr. Finck, with respect to its circumstantial identification? What the Government is asserting here, as I understand it, is that Exhibit No. 698 ought to come in as a part of Exhibit No. 697.

Mr. Finck: With respect to the attachment, your Honor, of course we couldn't tell anything about that, and the circumstance of the number "3091" and the number "3092", would not necessarily mean that this correspondence was attached together.

Nobody in the office knew anything about it, so I did not admit such a fact.

Justice Stephens: Mr. Knuff is not relying upon the answer to the request for admissions served upon you under Rule 36. He is relying simply upon circumstantial identification.

Mr. Finck: I object to it on the ground that no proper foundation has been laid for its admission, of course, and in addition to that, I also object to it on all the
6393 grounds stated with respect to Exhibit 695.

Justice Garrett: The only question immediately before the Court is the question of the identification of Exhibit 698, is it not? I mean, that is the thing we are asked to rule on now? We have to determine whether or not this is circumstantially identified.

Mr. Knuff: That is right.

Justice Stephens: Well, we will have to take that under advisement.

I am sorry, but we have to adjourn at this time. I have an emergency matter in the Court of Appeals. Unhappily, there are only two judges sitting on the Court of Appeals other than myself, and this is an emergency matter presented there which has to do with a trial in the District Court.

Therefore, we will have to adjourn until 2:30.

(Thereupon, at 11:55 o'clock a.m., a recess was taken until 2:30 o'clock p.m., of the same day.)

6394 AFTERNOON SESSION

(The trial was resumed at 2:30 o'clock p.m., pursuant to recess.)

Justice Stephens: Mr. Finck, I think we were hearing from you about the admissibility of proposed Exhibit 698, as allegedly circumstantially connected with Exhibit 697.

Mr. Finck: If the Court please, I desire to say no more, except this, that I see nothing in Exhibit 697 which in and

of itself would circumstantially identify 698, which is now before us.

Justice Stephens: Has 697 been admitted?

Mr. Finck: Yes, it has.

Justice Stephens: Read your answer to the request for the admission, Mr. Finck. Read both the request for admission and the answer, if you will.

Mr. Finck: National is requested to admit that: "National Gypsum Company, on or about October 24, 1935, sent a letter to H. E. Chism, Texas Cement Plaster Company, Oklahoma City, Oklahoma."

Justice Stephens: That is directed to Exhibit 698, is it?

Mr. Finck: Yes.

Justice Stephens: Now what do you say?

Mr. Finck: We say we: "Cannot truthfully either admit or deny that the defendant on or about October 24,
6395 1935, sent a letter to H. E. Chism, referred to as Exhibit 13 in Government's Request for Admissions, although the copy of which said Exhibit 13 is a photostat, came from the files of the defendant and was returned to the Government under subpoena. No persons now associated with the defendant, National Gypsum Company, can identify the documents."

Justice Garrett: I suppose that should be "document".

Mr. Finck: It should be.

Justice Stephens: Do you deny that it is circumstantially connected? I call your attention to the fact that, laying aside the question of your admission now, and giving your attention, Mr. Finck, purely to the matter of circumstantial connection, 697 says, in the first paragraph:

"Note attached correspondence with Texas Cement Plaster Company. They want to buy Foil Lath and Foil Wallboard from us and possibly Tile Board and Grain Board."

Then at the bottom:

"In the attached letter, you will note I have added the freight from Sweetwater to Texas Cement Plaster Company's mill."

And in Exhibit 698, it says, about two-thirds of the way down:

"Freight from Sweetwater to your mill".

Mr. Finck: That is the only connection that I can see in the two documents. Exhibit 697 refers to:

6396 "Note attached correspondence wtih Texas Cement Plaster Company. They want to buy Foil Lath and

Foil Wallboard from us and possibly Tile Board and Grain Board."

Then in the letter written to Mr. Chism, it refers to "your recent note to our Dallas Office".

You will note that Exhibit 697 was addressed to Krumholz at the Chicago Office. I see no connection there.

Justice Stephens: I don't quite see your point there. Exhibit 697 is directed to Krumholz at the Chicago Office, but that is an inter-office communication, isn't it?

Mr. Finck: Yes, that is an inter-office communication attaching certain correspondence with the Texas Cement Plaster Company. And, of course, 698 is a letter addressed to the Texas Cement Plaster Company. But I can't connect them both at this time by reading them. It is very true that the "Freight from Sweetwater to your mill" is indicated in the letter to Chism. But otherwise, I see no connection.

Justice Stephens: Well, it is a very close point. Judge Garrett and I are inclined to think it ought not to come in. In a way, Mr. Knuff, it is an evasion—I am sure it is not an international evasion, I don't use the term in that sense at all—of the ruling we made yesterday. If you want to serve exhibits that have attachments, and get them in within Rule 36, you should serve them together and get an admission which concerns all of them. True, 698 was
6397 served as well as 697, but the defendants say they know nothing about 698. It is a sort of a situation where the evidence is equivocal as to whether it is circumstantially connected or not, and where it is equivocal it isn't preponderating; and since the burden is upon the person offering it to show that it is admissible, Judge Garrett and I are inclined to think that it ought not to come in. Judge Jackson has a different view. It is a close question, but I think we had better rule that it is not admissible. You may have leave to try and prove it some other way, if you can.

Justice Jackson: In my opinion it is admissible,—without taking up too much wording in the record,—for the reasons that were advanced by Mr. Knuff in his tender.

Mr. Knuff: May it please the Court, I would like to have marked for Identification Government's Exhibit 699, the same being a letter dated June 25, 1932, addressed to the Board Survey Company, and signed National Gypsum Company, R. F. Burley.

(The document referred to was marked as Government's Exhibit No. 699 for Identification.)

Mr. Knuff: I would also like to have marked for Identification as Government's Exhibit 700, a carbon copy of a letter addressed to Mr. R. F. Burley, and signed Board Survey Company, dated July 2, 1932.

6398 (The document referred to was marked as Government's Exhibit No. 700 for Identification.)

Mr. Knuff: I would also like to have marked for Identification as Government's Exhibit 701, a letter dated July 12, 1932, addressed to the Board Survey Company, and signed National Gypsum Company, R. F. Burley, Vice President.

(The document referred to was marked as Government's Exhibit No. 701 for Identification.)

Mr. Knuff: I would also like to have marked for Identification as Government's Exhibit 702, a carbon copy of a letter dated August 9, 1932, addressed to R. F. Burley, and signed Board Survey Company.

(The document referred to was marked as Government's Exhibit No. 702 for Identification.)

Mr. Knuff: In connection with Government's Exhibits 699, 700, 701 and 702, I call Your Honors' attention to Paragraph 14 of the Government's Request for Admissions. Paragraph 14, in connection with Exhibit 699, reads as follows:

"National Gypsum Company, on or about June 25, 1932, sent a letter to Board Survey Company, Chicago, Illinois.

A photostatic copy of said letter is attached hereto, 6399 made a part hereof, and marked Exhibit 14."

The answer of National Gypsum Company to that request is contained in Paragraph 6, in which National states that it admits 14.

In connection with Government's Exhibit 700, I call Your Honors' attention to Paragraph 15 of the Government's Request directed to National, in which appears the following:

"National Gypsum Company, on or about July 5, 1932, received a letter from Board Survey Company, dated July

2, 1932. A photostatic copy of said letter is attached hereto, made a part hereof, and marked Exhibit 15."

The answer of National Gypsum Company to that Request likewise appears in Paragraph 6, wherein National admits Paragraph 15, but with respect to Request No. 15 says that No. 15 is a photostat of an unsigned carbon copy of the document, the original of which was sent or received—in this case it would be received—by Mr. Burley.

With respect to Exhibit 701, I call Your Honors' attention to Paragraph 16 of the Request, which reads as follows:

"National Gypsum Company, on or about July 12, 1932, sent a letter to Board Survey Company, Chicago, Illinois. A photostatic copy of said letter is attached hereto, made a part hereof, and marked Exhibit 16."

The answer of National is contained in Paragraph 6, in which National admits Item No. 16 of the Govern-
6400 ment's Request.

In connection with Exhibit 702, I direct Your Honors' attention to Paragraph 17 of the Government's Request, which paragraph reads as follows:

"National Gypsum Company, on or about August 11, 1932, received a letter from Board Survey Company, dated August 9, 1932. A photostatic copy of said letter is attached hereto, made a part hereof, and marked Exhibit 17."

The answer of National is contained in Paragraph 6, and in Paragraph 6 National admits the letter marked for Identification as Government's Exhibit 702, although they say here that this is a photostat of a carbon copy of the letter, the original of which, in this case, was received by National.

We now offer in evidence Government's Exhibits 699, 700, 701 and 702.

Mr. Bromley: If the Court pleases, it does seem to me that counsel could have saved us much time and many dollars of expense if he had stated merely that National admitted the authenticity of these four documents, without reading into the record, and making us pay for it, all of these requests and answers, when the net effect of them is an admission by National. I do wish and I make the request that counsel summarize these things and not read them into the record, because we have got to pay for

6401 them, unfortunately, and it is getting to be a tremendous burden.

Justice Stephens: I was about to make that same suggestion, with a little modification,—that if there is any qualification upon the admission, Mr. Finck could stand up and state what he had admitted, in very brief terms. We have had here two or three pages of transcript, at a dollar a page—(Laughter).

Mr. Knuff: (Interposing) In view of the fact that this is an extra-judicial proceeding, I thought you would want the record to show exactly what it was.

Justice Stephens: If there was any dispute as to its meaning, all right. Then I think both the Government and the other side have a right to have indicated in the record the data which is the foundation of the Court's ruling. But where it is all admitted, as this seems to be, there is hardly any reason for taking any such space.

Which are the two as to which there is a qualification on the admission?

Mr. Knuff: As to 700 and 702, these happen to be carbons, although there is no qualification on their admission. They admit that they did receive the originals.

We are not offering the writing on either Exhibit 699 or 702.

Justice Stephens: Is there any objection to these? There is no objection, I take it, on the ground of com-

6402 petency, Mr. Finck, since you have made these admissions?

Mr. Finck: Only as to Baker.

Justice Stephens: I understand that, but as to National?

Mr. Finck: That is right.

Justice Stephens: Is there any objection as to relevancy or materiality on the part of any defendants?

Mr. Finck: I would like to make an objection on such grounds, relevancy and materiality.

Mr. Johnston: I assume that the running objection and ruling will stand as to these. Certainly as to Texas, I want to object to these as incompetent, irrelevant and immaterial, and call the Court's attention to the fact that as to all of these, they just cover the same class of offer that these former letters did, and I assumed the ruling of the Court in the former would also apply to these.

Justice Stephens: We are talking about relevancy and materiality now, not about who they bind. It seems to me they probably are relevant and material, consistently with

previous rulings, because they go to this question of alleged illegal use of the Board Survey Company. So objections as to relevancy and materiality are overruled. The exhibits are received in evidence, under the ruling of the majority of this Court, only as binding upon the actual legal person who made the admission, to-wit, National.

6403 (The document referred to, marked as Government's Exhibits 699, 700, 701 and 702, were received in evidence.)

Mr. Knuff: I would like to have marked for Identification as Government's Exhibit 703, a letter dated September 17, 1932, addressed to Frank M. Miller, of the Board Survey Company, and signed National Gypsum Company, R. F. Burley, Vice President.

(The document referred to was marked as Government's Exhibit No. 703 for Identification.)

Mr. Knuff: In Paragraph 18 of Government's Request for Admissions, we asked National to admit that this letter was sent to Mr. Miller; and in Paragraph 6 of National's answer, National admits that the letter was sent.

We now offer in evidence Government's Exhibit 703.

Mr. Finck: The same objections.

Justice Stephens: The same ruling with respect to Exhibit 703. Objections as to relevancy and materiality are overruled; and the exhibit is received in evidence, under the ruling of the majority of the Court, as binding only upon National, the person who made the admission.

(The document referred to, marked as Govern-
6404 ment's Exhibit No. 703, was received in evidence.)

Mr. Knuff: I would like to have marked for Identification Government's Exhibits 704 and 705. Exhibit 704 is a letter dated September 26, 1932, addressed, to Board Survey Company, signed National Gypsum Company, "R. F. Burley—B", Vice President.

Exhibit 705 is a carbon copy of a letter dated September 27, 1932, addressed to Mr. R. F. Burley, National Gypsum Company, Buffalo, New York, and signed Board Survey Company.

(The documents referred to were marked as Government's Nos. 704 and 705, respectively, for Identification.)

Mr. Knuff: In Paragraph No. 19 of the Government's

Request for Admissions, we ask National to admit that Government's Exhibit 704 was sent to Board Survey Company; and in Paragraph 20 of the Request for Admissions, we ask National to admit that they received Government's Exhibit 705.

Paragraph 6 of National's answer admits that they sent Exhibit 704; and that they received the original of 705.

Justice Stephens: Those two exhibits are received under the same terms as the previous rulings. Any objections as to materiality and relevancy are overruled; and the exhibits are received as binding only upon National, the person making the admission.

6405 (The documents referred to, marked as Government's Exhibits Nos. 704 and 705, respectively, were received in evidence.)

Mr. Knuff: I would like to have marked for Identification Government's Exhibits 706 and 707.

(The documents referred to were marked as Government's Exhibits Nos. 706 and 707, respectively, for Identification.).

Mr. Knuff: Government's Exhibit 706 is a letter dated October 4, 1932, addressed to the Board Survey Company and signed National Gypsum Company, R. F. Burley, Vice President.

Exhibit 707 for Identification is a carbon copy of a letter dated October 8, 1932, addressed to Mr. R. F. Burley, and signed Board Survey Company.

In Paragraph No. 21 of the Government's Request for Admissions, we requested National to admit that they sent the letter which is marked for Identification as Government's Exhibit 706; and in Paragraph 22, we asked National to admit that they received the original of the letter which is marked Government's Exhibit 707.

Paragraph 6 of the defendant National's answer admits the sending and/or receiving of these two exhibits.

We offer in evidence Government's Exhibits 706 and 707.

6406 Justice Stephens: The same ruling as with respect to the two previous exhibits. The objections as to relevancy and materiality, if any, are overruled; and the exhibits are received in evidence as binding only upon the person making the admission, to-wit, National.

(The documents referred to, marked as Government's Exhibits Nos. 706 and 707, respectively, were received in evidence.)

Mr. Bromley: Wouldn't it do just as well if counsel said, in these instances, "counsel admits authenticity"?

Justice Stephens: I was going to suggest, myself, that possibly we could still further shorten this if Mr. Finck and Mr. Knuff could stand together, so there is no question. Or if Mr. Finck is sufficiently familiar with what is going on, I should think all you need to say, Mr. Knuff, is that "We have asked for an admission as to authenticity, of National, as to both of these exhibits, and the admission has been made."

Then we would save a great deal more time and space of the Court Reporter's record.

Where there is a debate or dispute whether or not the answer of a party, under Rule 36, constitutes an admission, then, of course, the record should show the data which the Court is ruling on; but otherwise, if it is without dis-
6407 pute, let's put it in in about five words, if we can.

Now what is the next?

Mr. Knuff: I would like to have marked for Identification Government's Exhibits 708 and 709.

(The documents referred to were marked as Government's Exhibits Nos. 708 and 709, respectively, for Identification.)

Mr. Knuff: Exhibit 708 is a letter dated June 2, 1933, addressed to the Board Survey Company and signed National Gypsum Company, R. F. Burley, Vice President.

Government's Exhibit 709 for Identification is a copy of a letter dated June 3, 1933, addressed to National Gypsum Company and signed Board Survey Company.

We offer in evidence 708 and 709.

Mr. Finck: They are both admitted.

Justice Stephens: There is no dispute as to authenticity, Mr. Finck, is that right?

Mr. Finck: They are admitted by National.

Justice Stephens: They may be received in evidence. Objections as to relevancy and materiality, if any, are overruled; they are received as binding only upon National, the person making the admission.

(The documents referred to, marked as Govern-
6408 ment's Exhibits Nos. 708 and 709, respectively, were received in evidence.)

Mr. Knuff: I would like to have marked for Identification Government's Exhibits 710 and 711.

(The documents referred to were marked as Government's Exhibits Nos. 710 and 711, respectively, for Identification.)

Mr. Knuff: Government's Exhibit 710 is a letter dated July 11, 1933, addressed to the Board Survey Company and signed R. F. Burley, Vice President. Exhibit 710 for Identification is a two-page exhibit.

Government's Exhibit 711 for Identification is a copy of a letter dated July 29, 1933, addressed to National Gypsum Company and signed Board Survey Company.

I offer in evidence Government's Exhibits 710 and 711.

Mr. Finck: The authenticity of both exhibits is admitted by National.

Justice Stephens: These are received in evidence. Any objections as to relevancy and materiality are overruled; they are received in evidence as binding only upon the person making the admission, to-wit, National.

(The documents referred to, marked as Government's Exhibits Nos. 710 and 711 for Identification, were
6409 received in evidence.)

Mr. Knuff: I would like to have marked for Identification Government's Exhibit 712, the same being a photostatic copy of a letter dated January 5, 1935, addressed to the Board Survey Company and signed National Gypsum Company.

(The document referred to was marked as Government's Exhibit No. 712 for Identification.)

Mr. Knuff: We now offer in evidence Government's Exhibit 712.

Mr. Finck: The authenticity of Exhibit 712 is admitted by National.

Justice Stephens: The authenticity being admitted by National, the exhibit is received as binding upon National only. Objections as to relevancy and materiality, if any, are overruled.

(The document referred to, marked as Government's Exhibit No. 712, was received in evidence.)

Mr. Knuff: I would like to have marked for Identification Government's Exhibit 713, the same being a letter dated February 19, 1936, addressed to the Board Survey

Company and signed National Gypsum Company, E. B. Biesinger.

(The document referred to was marked as Government's Exhibit No. 713 for Identification.)

6410 Mr. Knuff: I now offer in evidence Government's Exhibit 713.

Justice Stephens: Does National admit the authenticity of this exhibit?

Mr. Finck: We do.

Justice Stephens: It may be received in evidence as binding upon National only. Any objections as to relevancy and materiality are overruled.

(The document referred to, marked as Government's Exhibit No. 713, was received in evidence.)

Mr. Knuff: I would like to have marked for Identification Government's Exhibit 714.

(The document referred to was marked as Government's Exhibit No. 714 for Identification.)

Mr. Knuff: This is a two-page letter, dated December 17, 1930, addressed to the National Gypsum Company and signed Audenreid Whittemore, Vice President.

I would also like to have marked for Identification as Government's Exhibit 714-A, a one-page letter attached to Exhibit 714, and being dated December 17, 1930, addressed to National Gypsum Company and signed Audenreid Whittemore, Vice President.

(The document referred to was marked as Gov-
6411 ernment's Exhibit No. 714-A for Identification.)

Mr. Knuff: I would also like to have marked for Identification as Government's Exhibit 714 B, a four-page agreement dated the 17th of December, 1930, between Certain-teed Products Corporation and National Gypsum Company.

(The document referred to was marked as Government's Exhibit No. 714-B for Identification.)

Mr. Knuff: We now offer in evidence Government's Exhibits 714, 714-A and 714-B.

Justice Stephens: Is the authenticity of these items admitted by National?

Mr. Finck: It is, Your Honor.

Justice Stephens: Let us read them.

(Exhibits examined by the Court.)

Justice Stephens: Is there any objection as to relevancy or materiality?

Mr. Finck: The same objection, Your Honor.

Justice Stephens: What is the purpose of these exhibits?

Mr. Knuff: There are several purposes, Your Honor.

On the first page of Exhibit 714, you will notice that the Certain-teed Products Corporation is conveying to National Gypsum Company, Certain-teed Products Corporation's price on plaster and miscellaneous gypsum products. That appears under the designation "C. P. C.
6412 Established Sell. Price, f.o.b. Ft. Dodge". C. P. C., I take it, stands for Certain-teed Products Corporation.

Justice Stephens: What else are you offering them for?

Mr. Knuff: In the next place, it is somewhat on the same basis as the North Holston exhibits.

Under Exhibit 714-B, the contract provides for the purchase by National, of board, from Certain-teed.

Justice Stephens: The exhibits are received in evidence. Objections as to relevancy and materiality are overruled. They are received as binding upon the person only who admits them, to-wit, National.

(The documents referred to, marked as Government's Exhibits Nos. 714, 714-A and 714-B, respectively, were received in evidence.)

Mr. Knuff: Now apart from any request for admissions, I would like at this time to substitute the original document for the carbon copy, of Government's Exhibit 343. Exhibit 343 was introduced in this case in connection with Mr. Higgins' testimony. At that time Mr. Bromley furnished us with a carbon copy of 343. Since then we have found the original letter, and we would like permission to substitute the original of that letter for the carbon that has been received in evidence. The original of the letter has
6413 attached thereto the attachments that are mentioned in the carbon copy, which were not a part of the original exhibit. We are making the attachments a part of Exhibit 343 now.

6414 Justice Stephens: Is there any objection to this substitution by anyone?

Mr. Bromley: I don't understand the purpose of it.

Justice Stephens: The purpose of it, apparently, is to get in evidence certain attachments which are referred to in the carbon copy of Exhibit 343, and which are apparently attached to the original which is now being offered.

Mr. Bromley: Defendants object to the substitution, which obviously enlarges the scope and character of the original exhibit. I don't know anything about these things that he now annexes to Exhibit 343.

Mr. Knuff: Exhibit 343 came from the files of United States Gypsum Company—

Justice Jackson: (Interposing) Through what witness was that introduced?

Mr. Knuff: Mr. Higgins, when he was on the witness stand.

Justice Jackson: Was it objected to as not being complete?

Mr. Knuff: We didn't have Exhibit No. 343 at all, and Mr. Bromley handed it over to us, handed the carbon over to us, and said in effect—I am not quoting him directly—"Why don't you use this?"

We looked at it and had it marked, and offered it in evidence. We now find the original of it, which was
6415 taken from United States Gypsum Company's files, and we are substituting this for the carbon copy that Mr. Bromley furnished us.

Mr. Bromley: And adding five or six additional pages.

Mr. Johnston: I certainly object to substitution by adding these additional pages here, which seem to be five or six invoices, and putting them in now when we have no opportunity to cross-examine anybody about them. They couldn't be relevant, material or competent as to Texas.

Justice Stephens: Do you wish to be heard, Mr. Knuff?

Mr. Knuff: Well, as I said a moment ago, they came from the files of United States Gypsum Company. Mr. Bromley undoubtedly has photostats of them. I understand that before USG turned over anything to us, under subpoena, that they made photostats. They unquestionably have a photostat of this exhibit with these attachments.

Justice Stephens: Well, that doesn't go to the problem raised by the objections. The problem is that this Exhibit 343 came in through the testimony of Higgins, and the defendants had a chance at that time to cross-examine him as to its meaning; and if the attachments had been attached to the exhibit at that time, defendants would have had an opportunity to cross-examine Higgins on the attachments; but they weren't attached, and thus they didn't have that opportunity. I should think, unless you want to recall Higgins, that the objections are well taken to the sub-
6416 stitution of this exhibit.

The objections are sustained and the substitution is denied, with leave to the Government to recall Higgins if it wishes to accredit the attachments.

Mr. Bromley: May it please the Court, I find I totally misapprehended the statement of counsel with respect to Exhibit No. 714. Isn't it perfectly plain that there isn't any mention of patented board or lath or any other kind of board or lath in Exhibit No. 714, and if that be so, what possible materiality or relevancy can that have to any charge in this case?

Justice Stephens: Well, there is a reference to Keene's Cement.

Mr. Knuff: The second item is, "Concrete Bond Plaster", and the next one, "Sand Float Finish"—both of which are plaster.

Mr. Bromley: But there is no charge in the complaint that anybody agreed or conspired to fix the resale prices of plaster or Keene's Cement.

Mr. Knuff: This isn't a case of fixing the resale price, it is a case of the Certain-teed Products Corporation sending to National Gypsum Company, Certain-teed's prices.

Justice Stephens: Well, what do you want to prove by it, under the issue? What wrong does it aid you to prove; what charged wrong does it aid in the proof of?

6417 I ask that question, not to express doubt, but to get information. I don't understand it myself.

Mr. Knuff: Paragraph 45(c) of the complaint states:

"(c) concertedly raising, maintaining, and stabilizing the general level of prices for plaster and miscellaneous gypsum products manufactured and sold by said companies in the Eastern area."

Justice Stephens: That term "miscellaneous gypsum products" was defined how in the bill of particulars?

Mr. Bromley: As Keene's Cement, block and tile.

Under this contract, National is buying these products listed on the first page of Exhibit 714 from Certain-teed, and Certain-teed, in the second paragraph, states, among other things, in effect, "We will sell you Land Plaster at $3.75. Our price at which we sell generally is $6.00."

That is to show them what a good deal they are getting.

Then the contract provides that if the C. P. C. established selling price changes, then the price to National changes.

So of course Certain-teed has got to inform National

of what the established selling price charged by C. P. C. is, because if that changes, then the cost to National changes.

At any rate, it is a purchase by National, and if counsel contends that giving National this information is in support of any charge in the complaint, it must be a charge that National, in its resale of such plaster or
6418 Keene's Cement, as it bought from Certain-teed, would observe the established selling price of C. P. C.

But there is no charge in the complaint about resale price-fixing of plaster or Keene's Cement.

Justice Stephens: Mr. Knuff disclaims that it is introduced under the resale price-fixing charge. He asserts that it is introduced under Paragraph 45(c) of the complaint, which states, "(c) concertedly raising, maintaining, and stabilizing the general level of prices for plaster and miscellaneous gypsum products", and so forth.

How does it tend to prove that, Mr. Knuff?

Mr. Knuff: An interchange of price information—that is one of the commonest ways of getting into an agreement to stabilize prices, the interchange of price information.

Justice Stephens: This doesn't purport to be an interchange of price information; it purports to be prices at which Certain-teed will sell to National.

Mr. Knuff: That is in the first column, where it says $3.75. Then in the second column, under "C. P. C. Established Sell. Price, f.o.b. Ft. Dodge", it states the price as $6.00. That is the price that Certain-teed is selling at. Certain-teed is giving its price to National.

Mr. Bromley: Look at the next paragraph, Mr. Knuff, where it states:

"All prices quoted in this letter are subject to
6419 change if the general market price in the territory supplied by the Fort Dodge Plant changes", and so forth.

Mr. Knuff: I have read it—so what?

Mr. Bromley: That would explain to me why C. P. C. gave the established market price.

Justice Stephens: Well, we think the objections probably go to weight, Mr. Bromley, and we will receive Exhibit 714 in evidence, as previously stated. That is to say, the ruling may stand.

Mr. Knuff: I would like at this time to have marked for identification Government's Exhibit 715, the same

being an inter-office memorandum, dated October 19, 1928, addressed to J. F. Haggerty, and signed in typewriting, M. H. Baker, and superimposed on the typing appear the initials "M.H.B."

In Paragraph 1 of our request we asked the National Gypsum Company to admit that this memorandum was sent by Baker to Mr. Haggerty. In Paragraph 1 of their answer they say that they cannot either admit or deny that Baker sent this memorandum. Now I suppose here we have a situation where the matter will have to be spread on the record.

Justice Stephens: Yes, I suppose so, if you want to make a record on the matter.

Mr. Knuff: In connection with Government's Exhibit No. 715 for identification, under its request for admissions, the Government requested the National Gypsum Company to admit that:

6420 "M. H. Baker, on or about October 19, 1928, sent an inter-office memorandum to F. J. Haggerty, president of National Gypsum Company. A photostat of said inter-office memorandum is attached hereto, made a part hereof, and marked Exhibit 1."

The answer of National Gypsum Company appears in Paragraph 1 of National's answer to the Government's request for admissions. It reads as follows:

"1. Cannot truthfully either admit or deny that M. H. Baker on or about October 19, 1928, sent an inter-office memorandum to J. F. Haggerty, President of National Gypsum Company, as set forth in the Government's Exhibit 1, for the following reasons: J. F. Haggerty died on or about April 29, 1929. M. H. Baker does not have any present recollection of writing the memorandum. Defendant admits that said Exhibit was taken from the files of National Gypsum Company and that the initials 'M.H.B.' written at the end of the memorandum, are in the handwriting of M. H. Baker, President of National Gypsum Company."

Justice Stephens: Now what is your contention, Mr. Knuff?

Mr. Knuff: We would like at this time to offer in evidence Government's Exhibit No. 715, and in connection with that offer, and apart from the request for admissions, we say that the document is entitled to be admitted

6421 in evidence because it is admitted by National that the initials, "M.H.B." are in the handwriting of

M. H. Baker, President of the National Gypsum Company. Whether or not it was received by Mr. Haggerty, the fact remains that it is still an admission of M.H.B.—Mr. Baker.

Justice Stephens: Mr. Finck, what do you say?

Mr. Finck: May it please the Court, the document was submitted to the officers of National, and we cannot admit the request of the Government, that this memorandum was communicated to Mr. Haggerty. Furthermore, the document is entirely irrelevant, as I see it. There is no charge in the complaint that we exploited the Gypsum Institute. The memorandum on the face of it seems to have been filed in the Gypsum Institute files. The document did come from the files of the National Gypsum Company, but not from the files of J. F. Haggerty. There is no one in the company, no officer or employee or anyone else, to whom this has been presented, who knows anything about it, and we cannot make the admission which the Government requests.

Justice Stephens: You admit, however, that it was taken from the files of National?

Mr. Finck: That is right, and we admit that the initials, "M.H.B." are Mr. Baker's initials.

Justice Jackson: Made by him?

Mr. Finck: Presumably so. We admit that they
6422 are in his handwriting.

Justice Jackson: Then they would have to have been made by him.

Mr. Finck: Yes.

Justice Stephens: The question is one of relevancy.

Mr. Finck: The question is whether it was sent to Mr. Haggerty.

Justice Stephens: What difference does that make, if it is a statement by Mr. Baker as an officer of National, providing it is relevant and material—what difference does it make whether it reached Haggerty or not, if it is offered as an admission?

Mr. Finck: I suppose it doesn't, but my main contention is that it is irrelevant, that it only deals with the subject of the Gypsum Institute.

Justice Stephens: We will hear you, Mr. Knuff, before we rule on the question of its materiality and relevancy. There isn't any charge here, is there, that the defendants were exploiting the Gypsum Institute in 1928?

Mr. Finck: The memorandum itself is directed only to Baker's ideas as to how the Institute should be operated,

as far as I can see. He talks about the Institute being exploited with the trade—

Justice Stephens: (Interposing) We understand your position—

6423 Mr. Finck: (Continuing)—and setting up a code of trade ethics. What that has to do with any charge in the complaint I cannot see. I am just bewildered on that point.

Justice Stephens: What do you say, Mr. Knuff, briefly?

Mr. Knuff: If your Honor pleases, it shows a conspiratorial state of mind.

Under Paragraph 1 it says; "One and the same price to all dealers in each market."

Then under Paragraph 2 it says, "100% distribution through dealers."

Now insofar as Paragraph No. 2 is concerned, we allege that there was a conspiracy here to eliminate jobbers, and whether or not this conclusively shows that, or whether or not this exhibit, taken in and of itself conclusively shows a conspiratorial state of mind, we say that it has some weight, that it is relevant; and that this exhibit, in connection with all other evidence in the case, should be considered by the Court.

The Court will notice that this exhibit is dated October 19, 1928, during the period in which we say that the conspiracy was in operation. For that reason, we think that it is both relevant and material, as showing the state of mind of National at that time, as to Paragraph 1, and certainly as showing the state of mind of National insofar as jobbers were concerned.

Mr. Finck: If the Court please—

6424 Justice Stephens: (Interposing) Is there anything in the record about a Gypsum Institute?

Mr. Finck: Nothing.

Mr. Bramley: Nothing.

Justice Stephens: Yes, Mr. Finck?

Mr. Finck: It seems to me that the Government is going 'way beyond the purpose of the rules, when they are asking us to admit and asking the Court to admit in evidence documents which seem to contain real issues. Now if Mr. Knuff desires to have Mr. Baker explain what is meant by this memorandum, to the Court, he can get him very easily. I can explain everything in the memorandum, but I don't suppose that is my office at the moment.

But I hardly think that the Court should take a docu-

ment of this kind, which relates to an entirely foreign matter, something foreign to the issues, and draw inferences from it, when there is a real issue involved. This letter most certainly is not relevant to the issues in this case.

Justice Stephens: I am inclined to think that your objection to the use of the Rule to get the document in evidence, is not well taken, Mr. Finck. Of course, under the ruling of Judge Garrett and myself, it would be binding only upon National as respects the admission that these
initials were Baker's initials, and in his hand-
6425 writing, and that it was found in National's files;
but I suppose the purpose of Rule 36 is to get admissions in evidence of a binding character, for what they are worth.

It does seem to go far, in view of the controversial nature, of the claimed controversial nature of the alleged admission. However, I don't think we need to rule on it on the basis of Rule 36, and we will not make a ruling on that basis.

It is my view, and I think Judge Garrett agrees with me, that the offered document is entirely irrelevant and immaterial under the issues. It doesn't seem to me that the fact the defendants may be shown, or one of the defendants may be shown by the exhibit, to have an alleged conspiratorial feeling with respect to the Gypsum Institute, is sufficiently connected here. It is too remote. Do you agree with me?

Justice Garrett: Yes.

Justice Stephens: What is your view, Judge Jackson?

Justice Jackson: I dissent from that ruling. I think it is relevant and material and should be admitted.

Justice Stephens: The majority ruling is that it is irrelevant and immaterial, and the exhibit is excluded.

Mr. Knuff: I would like to have marked at this time, as Government's Exhibit No. 716 for identification, a telegram, dated May 17, 1929, addressed to S. L. Avery,
6426 and signed M. H. Baker.

(The document referred to was marked as Government's Exhibit No. 716 for identification.)

Mr. Knuff: We asked, in our request for admissions, for National to admit that Mr. Baker sent this telegram. National's answer to that was that they could not truthfully admit or deny that the telegram was sent by Mr.

Baker to Mr. Avery, because there was nothing in the contents of the telegram to refresh the recollection of any officer, employee or agent of the defendant that such a telegram was sent.

Apart from the request and the answer of National, we offer Government's Exhibit No. 716, and we contend that this exhibit is circumstantially identified, and for the following reasons:

First, the telegram is dated May 17, 1929, which was just four days prior to the May 21st agreement that has been testified to in this case, before.

Second, it is addressed to Mr. S. L. Avery, a person who was intimately associated with the May 21st agreement.

Third, in the first line of the telegram it states, "Our contract signed and in mail". In connection with that, Government's Exhibit No. 3 shows that the National Gypsum Company's contract was signed on the
6427 16th day of May, just one day previous to the 17th, the date of this telegram. So that the person who was sending the telegram certainly must have known something about when Government's Exhibit No. 3 was signed.

Fourth, the telegram says, "We are working with Ebsary with hope of everybody being set by Saturday to justify your calling meeting all board makers Monday." Since the telegram was dated May 17, 1929, I have consulted the World Almanac, and I find that Monday would be May the 20th, which was one day previous to the meeting of Tuesday, May 21st.

Fifth, the telegram was signed by a Mr. Baker—at that time there was a Mr. Baker connected with the National Gypsum Company at Buffalo, the very place where this telegram originated.

Sixth, this telegram was taken from the files of the addressee, S. L. Avery, or from the files of the United States Gypsum Company, and bears on its face the receipt stamp of the United States Gypsum Company, showing it to have been received in Chicago on May 17, 1929. I don't know that the hour hand indicates the exact hour that it was received, but there is a receiving stamp of the United States Gypsum Company affixed right to the tele-

gram. We received this from United Sates Gypsum Company under subpoena.

We say that in view of all these circumstances,
6428 although Mr. Baker hasn't any recollection of this telegram, that the telegram is circumstantially identified and is entitled to be admitted as an exhibit in this case.

Justice Stephens: Is there any objection?

Mr. Finck: If the Court please, we of course have told all we know about this telegram, but even though all the circumstances suggested by Mr. Knuff are true, after having submitted this to Mr. Baker I hesitate very much to admit it myself. He remembers nothing about it. It seems to me that—

Justice Stephens: (Interposing) We are not asking you to admit it. We are just asking what you state in reply, if anything, to Mr. Knuff's argument as to its alleged circumstantial identification, outside of your failure to admit.

Mr. Finck: I have nothing more to say on that.

Mr. Bromley: I don't understand that what counsel has said has anything to do with circumstantial identification. He hasn't said anything about the telegram. There is nothing on the telegram that identifies it at all. I don't believe what he has been arguing about is properly addressed to circumstantial identification at all. There is nothing on the document that identifies it.

Justice Stephens: Is it denied that it came out of your files?

6429 Mr. Bromley: It is not.

Justice Garrett: There is testimony as to that meeting on the 20th in the record, is there not?

Mr. Knuff: On the 21st.

Justice Garrett: Yes—that was my recollection.

Mr. Knuff: Mr. Lenci testified concerning that, and I am not sure whether Mr. Whittemore did or not. There is also in evidence, as Government's Exhibit 3, National's contract which shows that it was signed on the 16th of May.

Justice Stephens: Yes, I understand that.

(The Justices conferred.)

Justice Stephens: We are of the view that it is circumstantially identified, and it is received in evidence subject to the usual reservation with respect to declarations of alleged co-conspirators.

(The document referred to, marked as Government's Exhibit No. 716, was received in evidence.)

Justice Stephens: We will take the afternoon recess at this time.

(Thereupon, at 4:07 o'clock p.m., an adjournment was taken until 10:00 o'clock a.m., Wednesday, April 19, 1944.)

6430 IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF COLUMBIA

Civil Action No. 8017

UNITED STATES OF AMERICA,

Plaintiff,

v.

UNITED STATES GYPSUM COMPANY; NATIONAL GYPSUM COMPANY; CERTAIN-TEED PRODUCTS CORPORATION; THE CELOTEX CORPORATION; EBSARY GYPSUM COMPANY, INC.; NEWARK PLASTER COMPANY; SAMUEL M. GLOYD, doing business under the name of TEXAS CEMENT PLASTER COMPANY; SEWELL L. AVERY; OLIVER M. KNODE; MELVIN H. BAKER; BROR H. DAHLBERG; HENRY J. HARTLEY; FREDERICK G. EBSARY; and FREDERICK TOMKINS,

Defendants.

Seventh Floor,
Internal Revenue Building,
Washington, D. C.,
Wednesday, April 19, 1944.

The above-entitled cause came on for further hearing at 10:00 o'clock a.m., pursuant to adjournment, before Honorable Harold M. Stephens, Honorable Finis J. Garrett, and Honorable Joseph R. Jackson, sitting as the District Court of the United States for the District of Columbia.

APPEARANCES:

(Same as heretofore noted.)

6435 Mr. Knuff: May it please the Court, at this time we would like to have marked for identification Government's Exhibit 343-A, the same being a letter dated May 24, 1932, addressed to Mr. F. M. Miller, and having attached thereto National Gypsum Company's Invoices numbered 58,467, 57,851, 56,568, 56,499, 56,376, and 55,253. Those were handed up to Your Honors yesterday morning as a separate exhibit marked 343.

Justice Jackson: That is the one you wanted to substitute?

Mr. Knuff: Yes.

Justice Jackson: I don't believe I ever saw that.

Mr. Knuff: I gave them to the Clerk yesterday morning to place on the bench.

Justice Stephens: I have them, but Judge Garrett and Judge Jackson don't appear to have them.

Justice Jackson: What is the date of that, Mr. Knuff?

Mr. Knuff: May 24, 1932.

Justice Jackson: From Baker to Miller?

6436 Mr. Knuff: Yes.

Justice Jackson: I have it.

(The document referred to was marked as Government's Exhibit No. 343-A for identification.)

Justice Stephens: That is the original of the exhibit which, as Exhibit 343, has been put in in copy form, is it?

Mr. Knuff: Yes.

Justice Stephens: That is the one you attempted to substitute yesterday in order to get the attachments in, and we ruled adversely against you?

Mr. Knuff: That is right.

We asked Mr. Finck to admit the genuineness of the document, and in Paragraph 6 of Mr. Finck's answer the genuineness was admitted.

We now offer in evidence Government's Exhibit 343-A.

Justice Jackson: How many pages are there in that?

Mr. Knuff: There are two pages to the letter, and 6 pages of invoices, making a total of 8 pages.

Justice Stephens: And they are all marked Exhibit 343-A?

Mr. Knuff: Yes.

Justice Stephens: What paragraph of your request was that contained in?

Mr. Knuff: No. 30.

6437 Justice Jackson: That was the substituted sheet?

Mr. Knuff: Yes.

Justice Stephens: What paragraph of Mr. Finck's answer covers that?

Mr. Knuff: Paragraph 6.

Justice Stephens: Is there any objection?

Mr. Bromley: We object on the ground that it is incompetent because not binding on any defendant other than National.

Justice Stephens: Exhibit 343-A is received in evidence as binding upon National only, to-wit, the person who made the admission.

(The document referred to, marked as Government's Exhibit No. 343-A, was received in evidence.)

Mr. Knuff: I would like to have marked for identification at this time, Government's Exhibit 717, the same being a letter dated June 20, 1939, addressed to Mr. S. L. Avery and signed M. H. Baker, with the initials "MP" following Mr. Baker's name.

(The document referred to was marked as Government's Exhibit No. 717 for Identification.)

Mr. Knuff: In connection with this exhibit, we asked Mr. Finck to admit the genuineness of the document
6438 in Paragraph 3 of our request, or rather, we asked Mr. Finck to admit that the letter was sent to Mr. Avery. In answer to that, Mr. Finck—

Mr. Finck: (Interposing) If the Court please, I think I can save time. We will admit the authenticity of these next two exhibits.

Mr. Knuff: We offer Exhibit No. 717 in evidence.

Justice Stephens: That is received in evidence as binding only upon National, the person who made the admission.

(The document referred to, marked as Goverment's Exhibit No. 717, was received in evidence.)

Mr. Knuff: We would like to have marked at this time for Identification, Government's Exhibit 718, the same being a letter dated November 2, 1931, addressed to Mr. S. L. Avery, and signed M. H. Baker, President.

(The document referred to was marked as Government's Exhibit No. 718 for Identification.)

Mr. Knuff: I understand from Mr. Finck that the genuineness of that document is also admitted.

Mr. Finck: That is right.

Mr. Knuff: We offer in evidence Government's Exhibit 718.

Justice Stephens: It is received in evidence as
6439 binding on National only, the person who made the admission.

(The document referred to, marked as Government's Exhibit No. 718, was received in evidence.)

Justice Stephens: Does that finish those concerning National?

Mr. Knuff: That finishes the National exhibits, Your Honor.

Justice Stephens: What is the next set?

Mr. Knuff: The USG exhibits.

Justice Stephens: Are there available, by any chance, copies of USG's answers?

Mr. Bromley: Yes, Your Honor.

Justice Stephens: They weren't presented to the Judges heretofore, and it might be convenient if we had them now.

Mr. Bromley: We have one copy.

(Copy of USG answers handed to Justice Stephens.)

Justice Stephens: I will look at that, and then I will show it to my colleagues as necessary. It is quite brief. Proceed.

Mr. Knuff: I offer in evidence Government's Exhibit 550, the same having been previously marked for Identification. In the Government's Request for Admissions, we asked USG to admit that the letter was sent to Mr. Black. That is contained in Paragraph 1 of our Request.

6440 In Paragraph 1 of USG's answer, USG admitted that.

Justice Jackson: That is Exhibit 550?

Mr. Knuff: Yes.

Justice Jackson: How do we jump back like that?

Mr. Knuff: When Mr. Lenci was on the witness stand, I thought he could identify Mr. Carey's signature.

Justice Jackson: I see.

Mr. Keber: Judge Jackson, I thought I heard you make an observation that you had an extra copy of that series of exhibits, and if you do have, I wonder if we might use it back here?

Justice Jackson: Yes, I will write my name on here so it might be routed back to us.

Mr. Keber: Thank you.

(Set of USG exhibits handed to Mr. Keber.)

Justice Stephens: The admission seems not to comprehend the handwritten additions to the letter.

Mr. Knuff: Those are not offered.

Justice Stephens: Is there any objection to this document?

Does this contain more than one page, Mr. Knuff?

Mr. Knuff: This contains three pages, Your Honor.

Justice Stephens: Unless there is other objection, it will be received in evidence as binding only on USG, the person making the admission.

6441 (The document referred to, marked as Government's Exhibit No. 550, was received in evidence.)

Justice Stephens: Proceed.

Mr. Knuff: In connection with Government's Exhibit 550, in paragraph 2 of the Government's request, we asked USG to admit that on or about December 28, 1934, they sent a similar letter, and enclosed therewith similar enclosures, to each of the following companies: Atlantic Gypsum Products Corporation, Certain-teed Products Corporation, Kelley Plasterboard Company, Inc., National Gypsum Company, and Universal Gypsum & Lime Company. The USG has made that admission.

Justice Stephens: In Paragraph 1 of USG's answer?

Mr. Knuff: Yes.

We offer in evidence at this time Government's Exhibit 554, the same having been previously marked for Identification.

Justice Jackson: Identify that by date, please.

Mr. Knuff: December 31, 1934.

Mr. Johnston: If the Court please, before we go to that next exhibit, hadn't the record better show as to this admission on 550?

Justice Stephens: I don't think there is anything for the Court to do under those circumstances.

Mr. Johnston: He is offering it.

6442 Justice Stephens: Exhibit 550 is in evidence.

Mr. Johnston: I am talking about this other statement, this other admission. The fact that USG admits that a similar letter was sent to these other companies wouldn't in any manner bind Texas.

Mr. Knuff: Texas wasn't mentioned.

Mr. Johnston: That is what I wanted the record to show. It is incompetent, irrelevant and immaterial as to Texas.

Mr. Oliver: And also as to Celotex and Dahlberg.

Mr. Keber: I take the same position with respect to Certain-teed and Hartley.

Mr. Knuff: Certain-teed was mentioned.

Mr. Keber: But the admission wasn't made by Certain-teed.

Justice Stephens: Well, the admission which has just been referred to by Government counsel, based upon the Request for Admissions in Request No. 2, as to USG, and answered in Paragraph 1 of USG's answer to the Request for Admissions, is treated by the Court as binding only upon USG.

Now what is this next one?

Mr. Knuff: I offered in evidence, if Your Honor pleases, Government's Exhibit 554. That was previously marked for Identification while Mr. Lenci was on the witness stand. We asked USG, in Request No. 3, to admit that the letter was sent to Arthur Black; and in Paragraph 1 of USG's
6443 answer, they so admit.

Mr. Bromley: Except the handwritten notations.

Mr. Knuff: Except the handwritten notations, yes.

Justice Stephens: This is received in evidence as binding only on USG.

(The document referred to, marked as Government's Exhibit No. 554, was received in evidence.)

Mr. Knuff: With reference to Government's Exhibit 554, in paragraph 4 of the Government's Request for Admissions, we asked USG to admit that a similar letter was sent by the Board Survey Company, on December 31, 1934, to each of the following companies: Atlantic Gypsum Products Corporation, Certain-teed Products Corporation, Kelley Plasterboard Company, Inc., National Gypsum Company, and Universal Gypsum & Lime Company.

In Paragraph 1 of USG's answer, they so admit.

Justice Stephens: Except for the handwritten notations which may appear on the letter.

Mr. Knuff: That is right. Of course, there couldn't be any handwritten notations on the letters—

Justice Stephens: (Interposing) I see that USG's response has to do with handwritten notations which appear on Exhibits 1, 2 and 3—that is, Exhibits 1, 2 and 3 referred to in the Request for Admissions. What do they cor-
6444 respond to in the exhibits as listed in the Court numbers?

Mr. Knuff: No. 2 corresponds to Exhibit 554.

Justice Garrett: Well, it is marked "3" on mine. Is that December 31, 1934?

Mr. Knuff: No. 3 is also dated December 31, 1934. Exhibit 554, which is Exhibit No. 2 of the Government's Request for Admissions, is a one-page exhibit.

Justice Garrett: I see.

Justice Stephens: I am sorry, but I am a little confused. This Exhibit 554 that I have before me doesn't bear any exhibit number as it does in this other file.

Mr. Johnston: If the Court please, Exhibit 554 was a letter from Board Survey to Black, dated December 31, 1934, and was admitted on February 22.

Justice Stephens: It was identified, but it wasn't admitted, according to my records.

Mr. Johnston: Yes, identified.

Justice Stephens: I should think, as a matter of proper precaution, the record ought to show that the admission is recorded in the terms made by USG, which does not include an admission of any handwritten notations, and that the admission is treated by the Court as binding only on USG.

Mr. Knuff: I don't think any handwriting is involved in this one at all.

Justice Jackson: It doesn't make any difference 6445 whether there is or is not, does it, Mr. Knuff?

Mr. Knuff: No, your Honor.

Justice Stephens: If there isn't, you are not harmed; and if there is, USG is protected within the terms of its own admission.

Mr. Knuff: We offer in evidence Government's Exhibit 556, the same having been marked for Identification when the Witness George N. Lenci was on the stand.

We asked USG in Request No. 5 to admit that the letter was sent to Arthur Black; and in Paragraph 1 of USG's answer, they so admit, except that they don't admit the handwriting that is contained on this exhibit.

Justice Jackson: That is the letter starting "Re: Dunnage"?

Mr. Knuff: That is correct, your Honor.

Justice Stephens: The exhibit is admitted as binding only upon USG.

(The document referred to, marked as Government's Exhibit No. 556, was received in evidence.)

Mr. Knuff: With reference to Exhibit 556, we asked USG to admit that on or about December 31, 1934, they sent a similar letter to each of the following companies: Atlantic Gypsum Products Corporation, Certain-teed Products Corporation, Kelley Plasterboard Company,
6446 Inc., National Gypsum Company, and Universal Gypsum & Lime Company.

In Paragraph 1 of USG's answer, they so admit.

Justice Stephens: That admission may be recorded as binding upon USG only, and as not containing an admission of any handwritten notations which may possibly appear upon the letters referred to.

Mr. Knuff: I would like at this time to have marked for Identification Government's Exhibit 719, the same being a letter dated May 10, 1935, addressed to Mr. Arthur R. Black, and signed Board Survey Company, E. W. Casey, Executive Secretary.

(The document referred to was marked as Government's Exhibit No. 719 for Identification.)

Mr. Knuff: In Government's Request No. 7, we asked USG to admit that this letter was sent to Mr. Black; and in Paragraph 2 of USG's answer, they so admit, except for the handwriting notation in the upper left-hand corner of the exhibit.

Justice Stephens: There is no notation as to admission of the handwriting, but you don't mean to offer the handwriting, of course.

Mr. Knuff: We don't offer that anyway.

We now offer Government's Exhibit 719 in evidence.

Justice Stephens: That is in your Request No. 7?
6447 Mr. Knuff: That is right.

Justice Stephens: Exhibit 719 is received in evidence as binding on USG only.

(The document referred to, marked as Government's Exhibit No. 719, was received in evidence.)

Mr. Knuff: With reference to Government's Exhibit 719, we asked USG to admit that a similar letter was sent on May 10, 1935, to each of the following companies: Atlantic Gypsum Products Corporation, Certain-teed Products Corporation, Kelley Plasterboard Company, Inc., National Gypsum Company, and Universal Gypsum & Lime Company. In Paragraph 2 of USG's answer, they so admit.

Justice Stephens: That is covered by the Government's Request No. 81

Mr. Knuff: That is right, Your Honor.

Justice Stephens: Well, that admission may be shown, but is it treated by the Court as binding upon USG only.

Mr. Knuff: I would like at this time to have marked for Identification Government's Exhibit 720, the same being a telegram dated May 17, 1929, addressed to S. M. Gloyd, Texas Cement Plaster Company, and signed S. L. Avery.

(The document referred to was marked as Government's Exhibit No. 720 for Identification.)

6448 Mr. Knuff: We would also like to have marked for Identification Government's Exhibit 721, the same being a telegram dated 5-18-29, addressed to S. M. Gloyd and signed S. L. Avery.

(The document referred to was marked as Government's Exhibit No. 721 for Identification.)

Mr. Knuff: We would also like to have marked for Identification Government's Exhibit 722, the same being a telegram dated May 20, 1929, addressed to S. L. Avery, and signed S. M. Gloyd.

(The document referred to was marked as Government's Exhibit No. 722 for Identification.)

Mr. Knuff: With reference to Exhibit 720, in Paragraph 9 of the Government's Request, we requested USG to admit that such a telegram was sent; and in Paragraph 2 of USG's answer, it is so admitted.

With reference to Government's Exhibit 721, in Paragraph 10 of the Government's Request, we asked USG to admit that such a telegram was sent; and in Paragraph 2 of USG's answer, they so admit.

With reference to Government's Exhibit 722, in Paragraph 11 of the Government's Request, we asked USG to admit that such a telegram was received; and in Paragraph 2 of USG's answer, USG so admits.

6449 We offer in evidence Government's Exhibits 720, 721 and 722.

Justice Stephens: They are received as binding upon USG only, the person making the admission.

(The documents referred to, marked as Government's Exhibits Nos. 720, 721, and 722, respectively, were received in evidence.)

Mr. Bromley: May it please the Court, I don't believe it is necessary for Mr. Knuff to burden us with a recital of the number of his request and the number of our admission. Most of these exhibits we admit. Why can't he say, "Authenticity admitted", and stop, instead of taking a half a page of the record as to each one of these?

Justice Stephens: I should think that could be done.

Mr. Knuff: I will do so.

Justice Stephens: The only place where it is necessary to put in either the substance or the form or the detail of an admission and request, is where there is something for the Court to act on, some dispute between counsel as to what the admission means; but if you have received an admission of authenticity of a document, all you need to do is refer to the document and say that an admission of authenticity has been made; and if counsel for the opposite party
6450 doesn't object to that, that is the end of it.

Mr. Knuff: I should have had marked for Identification at the same time, Government's Exhibit 723, the same being a carbon copy of a letter dated May 20, 1929, addressed to Mr. S. M. Gloyd, and signed "President".

(The document referred to was marked as Government's Exhibit No. 723 for Identification.)

Mr. Knuff: Authenticity admitted.

Justice Stephens: By USG?

Mr. Knuff: By USG.

We offer Government's Exhibit 723 in evidence.

Justice Stephens: Received in evidence as binding on USG only.

(The document referred to, marked as Government's Exhibit No. 723, was received in evidence.)

Mr. Johnston: If the Court please, I just want to make an observation or inquiry. I suppose the purpose of the Government in offering that exhibit is to clear up any question as to whether or not Mr. Gloyd was at that meeting on May 21, 1929, in Chicago. I think that letter clarifies the situation. I suppose that is why it was offered.

Mr. Knuff: We are not bound by any of Mr. Johnston's suppositions.

6451 Justice Stephens: Is there a dispute between the parties as to whether Mr. Gloyd was or was not present at that meeting?

Mr. Knuff: I don't know whether he was or not.

Mr. Johnston: There is no evidence that he was there, and they have been talking all the time about his attending that meeting in Chicago, and this ought to satisfy them.

Justice Stephens: You may proceed, gentlemen.

Mr. Knuff: I wonder if we can take the morning recess at this time?

Justice Stephens: Yes.

(Thereupon, a short recess was taken, after which the trial was resumed as follows:)

6452 Justice Stephens: Proceed.

Mr. Knuff: With regard to Exhibits 720, 721, and 723, authenticity wasn't the only thing involved in the Government's request. Admission was also requested that these telegrams, Exhibits 720 and 721, were sent. So I want the record to show that they are authentic telegrams, and that the telegrams, Exhibits 720 and 721, and the letter, Exhibit 723, were sent.

I would like at this time to have marked for identification Government's Exhibit No. 724, the same being a telegram, or rather a copy of a telegram, dated May 18, 1929, addressed to F. Fred G. Ebsary, and signed S. L. Avery.

(The document referred to was marked as Government's Exhibit No. 724 for identification.)

Mr. Knuff: We offer in evidence Government's Exhibit No. 724. It is admitted that the telegram is authentic, and that it was sent.

Justice Stephens: The admission may be shown, and the exhibits will be received as binding only upon USG.

(The document referred to, marked as Government's Exhibit No. 724, was received in evidence.)

Mr. Knuff: We would like at this time to have marked for identification Government's Exhibit 725, the same
6453 being a copy of a telegram, dated May 18, 1929, addressed to M. H. Baker, of the National Gypsum Company, and signed S. L. Avery.

(The document referred to was marked as Government's Exhibit No. 725 for identification.)

Mr. Knuff: We would also like to have marked for identification at this time Government's Exhibit No. 726, the same being a copy of a telegram dated June 24, 1929, addressed to M. H. Baker, and signed John E. MacLeish.

(The document referred to was marked as Government's Exhibit No. 726 for identification.)

Mr. Knuff: We offer in evidence Government's Exhibits 725 and 726.

It is admitted by USG that the telegrams are authentic, and that they were sent.

Mr. Bromley: The admission referred to by counsel was qualified to the extent that the typed notations to the left of the signature on Exhibit 726, were not on the telegram as sent.

Mr. Knuff: That is correct.

Justice Stephens: That limitation may be shown upon the admission.

The exhibits are received in evidence as binding
6454 upon USG only.

(The documents referred to, marked as Government's Exhibits Nos. 725 and 726, were received in evidence.)

Mr. Knuff: We would like to have marked for identification at this time Government's Exhibit No. 727, the same being a letter, dated June 13, 1933—

Justice Stephens: (Interposing) That is not the next one in the file which we have, is it?

Mr. Knuff: No, your Honor, skip one.

It is dated June 13, 1933, and is addressed to Mr. F. M. Miller, and signed in typewriting, H. F. Sadler.

(The document referred to was marked as Government's Exhibit No. 727 for identification.)

Mr. Knuff: The authenticity of this memorandum, and the fact that it was sent, is admitted by USG.

Justice Stephens: Exhibit No. 727 is received in evidence as binding upon USG only.

(The document referred to, marked as Government's Exhibit No. 727, was received in evidence.)

Mr. Knuff: We would like to have marked for identification at this time Government's Exhibit No. 728, the same being a memorandum, dated April 21, 1933, address-
6455 ed to Mr. F. M. Miller—

Justice Stephens: (Interposing) You are going back now, in our sets of exhibits?

Mr. Knuff: Yes, I am going back one letter.

Justice Stephens: Oh, yes.

(The document referred to was marked as Government's Exhibit No. 728 for identification.)

Mr. Knuff: At this time we offer Government's Exhibit No. 728 as being circumstantially identified.

Justice Stephens: Is there any objection to the circumstantial identification of Exhibit No. 728?

Mr. Bromley: I don't see that there is any circumstantial identification of any kind.

Mr. Knuff: The circumstances on which the Government relies are: First, that it was admitted that Exhibit 728 was taken from the files of USG; second, you will notice on Exhibit 728 that the subject matter is Watertown Builders Supply Company, Cambridge, Massachusetts. You will notice also that the report is a report from Mr. Gallagher. You will also notice that it has to do with a cut in the plaster prices by Certain-teed.

Exhibit 727 likewise is a report from Mr. Gallagher and also has to do with the cutting of plaster prices. I think,
in view of the fact that Exhibit 728 at the top of it
6456 deals with the Watertown Builders Supply Company,
and the fact that it is within two months' time of Exhibit 727, and the fact that both reports were made by Mr. Gallagher, that they are circumstances from which the identification can be determined.

Justice Stephens: If we admit Exhibit 728 as circumstantially identified, we are in effect, ruling that it is the report or the basis of the report referred to in 727, and the dates are very different. What does it add, anyway, Mr. Knuff? Does it prove anything more than 727 proves?

Mr. Knuff: Well, it gives the specific plaster prices.

Justice Garrett: Was there any admission by USG as to Exhibit 728?

Mr. Knuff: USG refused to admit or deny that the letter was sent to Mr. F. M. Miller, but they do admit that it was taken from their files.

Justice Stephens: We are agreed here that it is not circumstantially identified, and Exhibit No. 728 is rejected.

Mr. Bromley: I should like to say at this time, may it please the Court, that in order to save the size of the record, and obviate what I feel to be useless repetition, that I am prepared to stipulate now, on condition that what I believe to be the next 20 or so exhibits contemplated to be offered by the Government are not offered, that a total of 20 complaints was handled by the Board Survey Company on the
basis of rebates on the price of patented board, ef-
6457 fected through rebates on prices of plaster, roofing,
insulation board, and the like.

Justice Stephens: Would that be sufficient to satisfy the Government and avoid the necessity of putting in these documents?

Mr. Knuff: It will not satisfy the Government, your Honor. We do not feel that we should take Mr. Bromley's conclusion as to what these exhibits show.

Mr. Bromley: You don't contend that they show anything different from what I just said, do you?

Mr. Knuff: We do contend that they show something entirely different than that it is a rebate.

Mr. Bromley: Would you mind telling me what you do contend?

Mr. Knuff: We contend that they show that there is a fixing of plaster prices, by some of these exhibits. They can call them rebates, or they can call them anything they want to, but we contend that it is a fixing of plaster prices.

(Discussion off the record.)

Justice Stephens: Proceed, Mr. Knuff.

Mr. Knuff: I would like to have marked for identification Government's Exhibits 729 and 730.

6458 (The documents referred to were marked as Government's Exhibits Nos. 729 and 730 for identification.)

Mr. Knuff: Government's Exhibit 729 is a carbon copy of a letter, dated November 14, 1932, to C. O. Brown, and signed by the Board Survey Company.

Government's Exhibit No. 730 for identification is a letter, dated November 28, 1932, to Frank M. Miller, and signed Warren Henley.

The authenticity of both of these letters was admitted by USG, and they also admit that Exhibit 729, or the original thereof, was sent, and that Exhibit 730 was received.

We offer in evidence Government's Exhibits Nos. 729 and 730.

Justice Stephens: Received, as binding on USG only.

(The documents referred to, marked as Government's Exhibits Nos. 729 and 730, were received in evidence.)

Mr. Knuff: I would like to have marked for identification Government's Exhibits 731 and 732.

(The documents referred to were marked as Government's Exhibits Nos. 731 and 732 for identification.)

Mr. Knuff: Government's Exhibit 731 is a carbon
6459 copy of a letter, dated May 13, 1933, to C. O. Brown, and signed by the Board Survey Company.

Government's Exhibit 732 for identification is a letter, dated May 25, 1933, to Miller, and signed by Warren Henley.

Exhibit 731 is a carbon copy of a letter, the genuineness of which is admitted, and it is further admitted that the original thereof was sent.

As to Exhibit 732, the genuineness of that letter is admitted, and it is further admitted that it was received by the United States Gypsum Company.

We offer in evidence Government's Exhibits 731 and 732.

Justice Stephens: These are received as binding on USG only.

(The documents referred to, marked as Government's Exhibits Nos. 731 and 732 for identification, were received in evidence.)

Mr. Knuff: I would like to have marked for identification Government's Exhibits 733 and 734.

(The documents referred to were marked as Government's Exhibits Nos. 733 and 734 for identification.)

Mr. Knuff: Government's Exhibits No. 733 is a carbon copy of a letter, dated August 2, 1933, addressed to C. O. Brown, and signed by the Board Survey Company.
6460 Exhibit No. 734 is a letter, dated August 18, 1933, addressed to Frank Miller of the Board Survey Company, and signed by Warren Henley.

The genuineness of Exhibit 733 is admitted, and also the fact that this exhibit was sent, or rather the original thereof; the genuineness of Exhibit 734 is likewise admitted, and also that it was received.

We offer in evidence Government's Exhibits 733 and 734.

Justice Stephens: These two exhibits are received as binding upon USG only.

(The documents referred to, marked as Government's Exhibits Nos. 733 and 734, were received in evidence.)

Mr. Knuff: I would like to have marked for identification Government's Exhibits 735 and 736.

(The documents referred to were marked as Government's Exhibits Nos. 735 and 736 for identification.)

Mr. Knuff: Government's Exhibit No. 735 is a carbon copy of a letter, dated August 3, 1933, addressed to C. O. Brown, and signed by the Board Survey Company.

Government's Exhibit 736 is a letter, dated August 18, 1933, addressed to Mr. Miller, and signed Warren Henley.

The genuineness, and the fact that the original of
6461 735 was sent, are admitted; and the genuineness and the fact that Exhibit 736 was received are admitted.

We offer in evidence Government's Exhibits 735 and 736.

Justice Stephens: These are received as binding on USG only.

(The documents referred to, marked as Government's Exhibits Nos. 735 and 736, were received in evidence.)

Mr. Knuff: I would like to have marked for identification Government's Exhibits 737 and 738.

(The documents referred to were marked as Government's Exhibits Nos. 737 and 738 for identification.)

Mr. Knuff: Government's Exhibit No. 737 is a carbon copy of a letter, dated August 3, 1933, addressed to C. O. Brown, and signed Board Survey Company.

Government's Exhibit 738 is a letter, dated August 18, 1933, addressed to Frank Miller, and signed by Warren Henley.

The genuineness of Exhibit 737, and the fact that the original of that exhibit was sent, are admitted; the genuineness of Exhibit 738 and the fact that it was received, are admitted.

We offer in evidence Government's Exhibits 737 and 738.

Justice Stephens: These exhibits are received as binding on USG only.

6462 (The documents referred to, marked as Government's Exhibits Nos. 737 and 738, were received in evidence.)

Mr. Knuff: Now, your Honors, skip one letter, that is the letter of August 15, 1932, in the sets of exhibits which you have.

I would like to have marked for identification Government's Exhibit 739, the same being a carbon copy of a letter, dated August 19, 1932, addressed to Warren Henley and signed by the Board Survey Company.

(The document referred to was marked as Government's Exhibit No. 739 for identification.)

Mr. Knuff: We offer in evidence Government's Exhibit 739.

Justice Stephens: Received as binding on USG only.

(The document referred to, marked as Government's Exhibit No. 739, was received in evidence.)

Mr. Knuff: We would like to have marked for identification Government's Exhibit 740, the same being a copy of a letter, dated August 15, 1933, addressed to F. M. Miller, and signed, in typewriting, H. F. Sadler.

6463 (The document referred to was marked as Government's Exhibit No. 740 for identification.)

Mr. Knuff: We would also like to have marked for identification Government's Exhibit 741, the same being a letter, dated August 29, 1932, addressed to Frank M. Miller, and signed Warren Henley.

(The document referred to was marked as Government's Exhibit No. 741 for identification.)

Mr. Knuff: We offer Government's Exhibits 740 and 741 in evidence, as circumstantially identified.

Justice Stephens: By what?

Mr. Knuff: By Exhibit 739. Exhibit No. 739 is a letter, addressed to Mr. Henley, and concerns W. Skobliski. Exhibit 740 gives the address of Mr. Skobliski as Long Island, and Exhibit 739 also gives his address as Long Island.

Justice Stephens: Well, we understand now that you claim that Exhibits 740 and 741 are circumstantially identified by 739, or in relation thereto?

Mr. Knuff: Yes, your Honor.

Justice Stephens: Let us read the three of them and perhaps we can see and ask questions, and thereby save time.

(The Justices read the exhibits referred to.)

6464 Justice Stephens: Let's talk about these one at a time. Is there any objection to the introduction of Exhibit 741 as being circumstantially identified with Exhibit 739, in view of the admission which I take it, USG has made, that Exhibit 741 came out of the files of USG—is that admitted?

Mr. Knuff: That is admitted, your Honor. It is admitted that 741 came from the files of USG.

Justice Stephens: What about that, Mr. Bromley, do

your contest that Exhibit 741 is identified circumstantially with Exhibit 739, which is already in evidence?

Mr. Bromley: Our position is that no one in our organization could identify Exhibit 741. It is not Henley's signature, and we know nothing about it except the fact that it came from our files.

Justice Stephens: Is the signature of Warren Henley admitted as correct?

Mr. Bromley: No, it is not.

Mr. Knuff: It is not denied, either.

Mr. Bromley: We weren't asked about it. We now deny it.

Mr. Knuff: The circumstance that identifies the letter apparent from the first paragraph of Exhibit 741, "Acknowledging your inquiry of August 19th", and so forth. Now Exhibit 739, which admittedly was sent by USG, is a letter dated August 19, 1932. So it seems the two are intimately connected.

6465 Justice Stephens: We think that Exhibit No. 741 is circumstantially identified, and it is received in evidence as binding only on USG.

(The document referred to, marked as Government's Exhibit No. 741, was received in evidence.)

Justice Stephens: We don't think that Exhibit 740 is circumstantially identified, at least we don't see that it is presently, Mr. Knuff. We haven't heard you on that, but so far, we don't see any relationship, on the face of it, between Exhibits 740 and 739.

Mr. Knuff: If Exhibit 740 is admitted in evidence as circumstantially identified, it is—

Justice Stephens: (Interposing) We haven't admitted Exhibit No. 740 yet.

Mr. Knuff: I beg your pardon. If Exhibit 741 is admitted in evidence as circumstantially identified, I don't believe that it is subject to the limitation that it is only binding on USG.

Mr. Bromley: That is a novel theory. The only way that it comes in is because of its connection with a document, the only status of which is that we are the only defendants who admit its authenticity.

Justice Stephens: That is the same matter that

6466 we had yesterday under consideration, and we ruled against you on that, Mr. Knuff, at least Judge Garrett and I did.

Mr. Knuff: With reference to Exhibit 740, the circumstances that identify Exhibit 740 are these.

First, it is on the stationery of United States Gypsum Company. Right at the top it says, "United States Gypsum Co." It was taken from the United States Gypsum Company's files. The subject matter with which it deals is a dealer by the name of W. Skobliski, West Hempstead, Long Island. It has to do with a complaint concerning Certain-teed. Exhibit 739 deals with the same subject matter, W. Skobliski—

Justice Stephens: (Interposing) Let us read it again with that in mind. We didn't see, at the top of Exhibit 740, the reference to Skobliski when we first read it. It was obscured by the binding. Let us read it again.

(The Justices reread Exhibit No. 740.)

Justice Stephens: Who was Sadler?

Mr. Knuff: Mr. Sadler was at that time, I believe, assistant to the vice president.

Justice Stephens: Of what?

Mr. Knuff: Of USG. I take it that is what, "A. V. P." stands for.

Justice Stephens: The only thing we can see that would seem to identify it is the fact that Skobliski is referred to in each one of the exhibits, 739 and 740. So far as
6467 the subject matter of Exhibit 740 is concerned, it doesn't seem to us to mean anything in relation to Exhibit 739. We are of the view that it is not circumstantially identified.

Mr. Knuff: I didn't have an opportunity to finish pointing out my reasons for feeling that it is circumstantially identified.

Justice Stephens: I am sorry. Proceed.

Mr. Knuff: The subject matter of the complaint was Certain-teed in Exhibit 740. Exhibit 739 was a letter addressed to Certain-teed—

Justice Stephens: (Interposing) How do you get, out of Exhibit 740, that it relates to Certain-teed?

Mr. Knuff: It states:

"'Says he is wholesale and retail and that he sells more material to dea' rs than to jobs. Claims he handled 30 cars of Gypsum-Board last year and seven cars so far this year. Claims to be handling Certain-teed.'"

Exhibit 740 relates to Certain-teed. Exhibit 739, which is a letter just four days later than Exhibit 740, and which would ordinarily come out some time later than Exhibit 740, was addressed to Mr. Warren Henley of the Certain-teed Products Corporation.

As I previously said, Exhibit 740 is on the stationery of the United States Gypsum Company, on their printed letterhead. Mr. Sadler, at that time, was assistant to
6468 the vice president of USG; and it came from the files of United States Gypsum Company.

Justice Stephens: Exhibit No. 739 is a letter which Board Survey sent to Certain-teed.

Mr. Knuff: That is right.

Justice Stephens: How can that be said to refer to previous correspondence between USG and Board Survey?

Mr. Knuff: Exhibit 740 is a letter to Board Survey.

Justice Stephens: That is right.

Mr. Knuff: And the Board Survey then follows that up on the 19th of August, by writing a letter to the concern which was mentioned in Exhibit 740, which is Certain-teed. It seems to me to be a perfect chain.

Mr. Sadler made the complaint to Board Survey on the 15th of August. The Board Survey, on the 19th of August, writes to Certain-teed and Certain-teed was the subject matter of the complaint in the letter of August 15, 1932, Exhibit 740.

Justice Stephens: When you get Exhibit 740 in, if it should come in, what do you prove by it? What does it mean?

Mr. Knuff: Well, it means just this, your Honor, that in Paragraph 92 of the complaint we set forth that USG is policing the industry, and—

Justice Stephens: (Interposing) We understand all that, that that is your charge, but what I am trying to see is the relevancy of Exhibit 740 to that charge.

6469 Mr. Knuff: The extent of policing activities under the licensing agreement is relevant and material under the allegation of subterfuge in Paragraph 46. We don't want to argue that at this time, but that is our theory.

Justice Stephens: You don't understand me, that isn't what I am asking you about. I know what you contend your complaint charges. Now I am trying to find out what the relevancy of Exhibit 740 is to that complaint. Let me read it again. I may be dense about it, but I just don't see it.

Is it the second paragraph of Exhibit 739 which you think is a reference to Exhibit 740?

Mr. Knuff: Well, I think all of Exhibit 739 is with reference to 740, your Honor.

Justice Stephens: The first paragraph of Exhibit 739 says, "Please refer to our previous correspondence and your June 21 letter", and so forth. Now Exhibit 740 is not a letter of June 21, and it isn't previous correspondence between Certain-teed and Board Survey, but is previous correspondence, if any, between USG and Board Survey. It seems to me that unless you get it in under some other paragraph of Exhibit 739, that it obviously is circumstantially disconnected, rather than connected.

Mr. Knuff: "Please refer to our previous correspondence" would mean correspondence between Board
6470 Survey and Warren Henley—

Justice Stephens: (Interposing) Warren Henley was from Certain-teed Company, wasn't he?

Mr. Knuff: Yes, your Honor.

Justice Stephens: That is what I said. I said that the reference was to previous correspondence between Board Survey and Certain-teed, and Exhibit 740 is not such correspondence.

Mr. Knuff: That is right, and we don't contend that it is.

Justice Stephens: Then what circumstance does connect it with Exhibit 739?

Is it the mere fact that in the second paragraph of Exhibit 739 it is asserted that special allowances have been made by Certain-teed to Skobliski, and that Exhibit 740 relates to Skobliski?

Mr. Knuff: That is one of the items that connect it. The fact that the subject matter at the top of Exhibit 739 is "Re: W. Skobliski, Long Island, N. Y.", which is also the subject matter of 740, is another circumstance.

The fact that Exhibit 739 is dated August 19, 1932, and Exhibit 740 is dated August 15, 1932, is another circumstance.

A further circumstance is that the letter, Exhibit 739, was addressed to Warren Henley, and the complaint con-
6471 tained in Exhibit 740 had to do with Certain-teed. Warren Henley is with Certain-teed. Furthermore, the fact that both 739 and 740 were taken from the files of USG, and that Exhibit 740 is on the letterhead of USG, are all circumstances identifying the correspondence.

Justice Garrett: I take it that the last paragraph of Ex-

hibit 740 is an excerpt from some report that was sent to Gallagher by a salesman who made some investigation into Skobliski's business?

Mr. Knuff: That would be my understanding.

Justice Garrett: It is in quotation marks, and it says that it is a report submitted to Sales Manager Gallagher, by salesman Roche. Now Gallagher was the Sales Manager of USG, was he?

Mr. Knuff: Yes.

Justice Garrett: And salesman Roche was a salesman for whom?

Mr. Knuff: I would assume that Roche was a salesman for USG.

Justice Garrett: His name has been in the testimony before, I believe, but I have forgotten which company he was a salesman for.

Mr. Knuff: If the name Roche has ever been mentioned in the testimony, your Honor, I don't recall it.

Mr. Bromley: Maybe your Honor is thinking of Roos.

6472 Justice Garrett: No, I am thinking of a salesman. I thought that someone testified about a saleman by the name of Roche.

Justice Jackson: There were two men by the name of Roos, weren't there, one an inventor, and the other a salesman?

Mr. Knuff: Yes, Carlisle K. Roos was the inventor, and E. G. Roos was the sales manager, at one time, for Certain-teed.

Justice Stephens: Judge Garrett and I are, for some reason or other, unable to see the circumstantial identification of Exhibit 740. Judge Jackson has a different view. In addition to that, I will say that I can't see that Exhibit 740, on its face, means anything at all in respect of alleged undercutting of prices, or price-fixing on plaster. If it said in the last sentence that these figures, $29 to $31, were less than bulletin prices, that might mean something, but it doesn't say that.

Mr. Knuff: Here is what Exhibit No. 740 means to me. Throughout the case Mr. Bromley, at one time or another, has said that Board Survey never did anything concerning dealers. Well, maybe Board Survey didn't do anything, but here you have a situation where you have a salesman of

USG going into warehouses and snooping around and finding out things.

Justice Jackson: That is all based on a complaint
6473 against Certain-teed?

Mr. Knuff: That is right.

Justice Jackson: Well, what is wrong with what Mr. Bromley said or what you say he said?

Mr. Knuff: I think that maybe, in so far as the corporate idea is concerned, Board Survey did it, but you have Board Survey being a wholly-owned subsidiary of USG, and you have USG's men doing the same thing.

Justice Jackson: To get something on Certain-teed?

Mr. Knuff: Yes.

Justice Jackson: Surely, if Certain-teed violated the license agreement, why not?

Mr. Knuff: That is right.

Justice Jackson: I don't know what this document means. I do think, however, that it has been sufficiently circumstantially identified. As far as its weight is concerned, to my mind it is a blank, it is a nothing. That is the way I feel about it, but it has been sufficiently identified, I think, in that all three of these exhibits, 739, 740 and 741, evidently deal with a complaint against Certain-teed as to sales made in alleged violation of their license agreement, through the sales being made to Skobliski. That is the only reason I feel that it is circumstantially identified. As to what it means, I don't know, so it won't mean anything to my mind, even if it were to be considered.

6474 Mr. Knuff: I suppose the Court is going to take the noon recess at this time.

Justice Stephens: Yes.

Mr. Knuff: Before announcing the recess, your Honor, Mr. Steffen and I have just been advised of something that has come up in our office that will undoubtedly keep us beyond the usual time for reconvening, 1:45, so I wonder if we can have an adjournment today until two o'clock?

Justice Stephens: Yes, surely.

(Thereupon, at 12:20 o'clock p. m., a recess was taken until 2:00 o'clock p. m., of the same day.)

6475 AFTERNOON SESSION

(The trial was resumed at 2:00 o'clock p. m., pursuant to recess.)

Justice Stephens: With respect to Exhibit 740, is it admitted that 740 came out of the files of USG?

Mr. Knuff: Yes, Your Honor.

Justice Stephens: It seems too bad to take any more time on Exhibit 740, because I can't think that it adds to or subtracts very much from the case. But it has been suggested to me, during the course of the noon hour, in considering this and conferring among the Judges about it, that possibly, Mr. Bromley, that may be circumstantially connected to Exhibit 739 in this way, that 740 appears to be a report by Sadler of USG to Board Survey concerning Skobliski, and a complaint by Salesman Roche concerning him, and it may, therefore, have been the foundation for writing the letter of August 19, Exhibit 739, from Board Survey to Henley of Certain-teed, to which Henley responded in Exhibit 741. That may possibly connect 740 with 739.

Mr. Bromley: May it please the Court, when we received these requests for admissions, we proceeded on the basis of trying to determine whether we could honestly and fairly admit or whether we couldn't, and of course we made no investigation on any theory of circumstantial identification.

Now in order to save time, and because the docu-
6476 ment seems to me to be entirely meaningless, and because the Government insists on it so strenuously, I am prepared now to make no objection to the circumstantial identification of Exhibit 740 for Identification, and to withdraw that objection if the record shows it already to have been made.

Justice Stephens: Very well; thank you, Mr. Bromley. Exhibit 740 may then come in evidence as binding on USG only.

(The document referred to, marked as Government's Exhibit No. 740, was received in evidence.)

Mr. Knuff: I would like to have marked for Identification Government's Exhibit 742, the same being a carbon copy of a letter of August 23, 1932, addressed to C. O. Brown, and signed by Board Survey Company.

(The document referred to was marked as Government's Exhibit No. 742 for Identification.)

Mr. Knuff: The fact of sending the letter and the fact that it is an authentic letter is admitted by USG.

We now offer Exhibit 742 in evidence.

Justice Stephens: That may be received as binding on USG only.

(The document referred to, marked as Government's Exhibit No. 742, was received in evidence.)

6477 Justice Stephens: I am beginning to wonder a little, Mr. Knuff—that is the reason I pause—there have been now a half a dozen exhibits, I imagine, in the nature of complaints by Board Survey to Certain-teed, that Certain-teed is not abiding the license agreements, that is, that it is indulging in rebating or is cutting below the minimum price in some way or other. Isn't it beginning to be cumulative so that it is no longer necessary to prove those complaints?

Mr. Knuff: I suppose it might be said to be cumulative, but we wanted to give the Court just a very small picture of the number of these complaints. I dare say that we have, over in our office, and we could offer in evidence, a matter of 2,000 of these complaints. That is just a rough guess, I may be wrong one way or the other on that, but I believe that my guess is substantially correct.

Justice Stephens: The thought I had is that I assume there isn't any dispute in the case but that there were a very large number of the complaints by each of the licensees against the others, which were called to the attention of the Board Survey Company. Perhaps we could save some time and space that way, but possibly we will save more if we just go ahead.

Mr. Bromley: May it please the Court, so far as counsel's statement is concerned, my information is that the exhibits which he has offered or intends to offer, or
6478 which they submitted to us, are all the complaints of this nature made at any time by anybody; and so far as his statement of 2,000 complaints is concerned, I don't believe, if you took all the complaints made on any subject by any licensee over the entire period, it would approach that figure. Our information is that the total would not exceed more than between 300 and 400, of every nature, and that these rebating complaints which he has submitted to us with his Request for Admissions, are all of that nature ever made at any time.

Justice Stephens: For how long a period of time, Mr. Bromley?

Mr. Bromley: From 1932 to 1937, which was the period during which Board Survey was in existence. It was not in existence before that or after that.

Justice Stephens: Well, you may proceed, Mr. Knuff.

Mr. Knuff: I would like to have marked for Identification Government's Exhibit 743, the same being a letter dated September 8, 1932, addressed to Mr. Frank M. Miller, and signed Warren Henley.

(The document referred to was marked as Government's Exhibit No. 743 for Identification.)

Mr. Knuff: We offer this letter in evidence as being circumstantially identified by 742. USG, in their answer, refused to admit or deny the authenticity of this
6479 letter, although they do admit that the letter came from their files. The circumstantial identification is contained in the first paragraph of 743—

Mr. Bromley: (Interposing) Just a moment. I make no objection on the ground that it is not circumstantially identified.

Justice Stephens: Very well. Then it is received in evidence as binding upon USG only.

(The document referred to, marked as Government's Exhibit No. 743, was received in evidence.)

Justice Stephens: Let me read this.

(Government's Exhibit No. 743 examined by the Court.)

Justice Stephens: Very well.

Mr. Knuff: Skip one letter now, Your Honors, please. I would now like to have marked for Identification Government's Exhibit 744, the same being a letter dated March 24, 1934, addressed to Mr. Sadler and signed by Warren Henley. It is admitted by USG that this letter was received by them.

(The document referred to was marked as Government's Exhibit No. 744 for Identification.)

Mr. Knuff: We offer in evidence Government's Ex-
6480 hibit No. 744.

Justice Stephens: Received as binding on USG only.

(The document referred to, marked as Government's Exhibit No. 744, was received in evidence.)

Mr. Knuff: We would like to have marked at this time for Identification, Government's Exhibit 745, the same being a carbon copy of a letter dated March 16, 1934, addressed to Mr. C. O. Brown and signed by the Board Survey Company.

(The document referred to was marked as Government's Exhibit No. 745 for Identification.)

Mr. Knuff: This letter, Government's Exhibit 745, is circumstantially identified by Government's Exhibit 744. Mr. Bromley has refused to admit or deny that 745 was sent, or its authenticity.

Justice Stephens: Does he admit that it came from the files of USG?

Mr. Knuff: Yes.

Justice Stephens: Is there any objection now as to circumstantial identification?

Mr. Bromley: No, Your Honor.

Justice Stephens: It is received in evidence as binding on USG only.

6481 (The document referred to, marked as Government's Exhibit No. 745, was received in evidence.)

Mr. Knuff: I would like to have marked for Identification Government's Exhibits 746 and 747.

(The documents referred to were marked as Government's Exhibits Nos. 746 and 747, respectively, for Identification.)

Mr. Knuff: Exhibit 746 is a letter, or carbon copy of a letter, dated April 24, 1934, addressed to Warren Henley and signed Board Survey Company.

Government's Exhibit 747 is a letter addressed to H. F. Sadler, signed Warren Henley, and dated May 11, 19?

Government's Exhibit 746 is admitted to be an authentic copy of a letter that was sent by USG, and 747 is admitted to have been received by USG.

Justice Stephens: You don't quite mean that, do you? You mean that USG admits 746 is an authentic copy of a letter sent by Board Survey to Certain-teed?

Mr. Knuff: That is right.

Justice Stephens: And it also admitted that 747 is the reply?

Mr. Knuff: The word "reply" hasn't been used, but it obviously is the reply, and what they have admitted

6482 is that they received it.

Justice Stephens: If there is no objection on the ground of identification, they will be received in evidence, Exhibits 746 and 747, as binding on USG only.

(The documents referred to, marked as Government's Exhibits Nos. 746 and 747, respectively, were received in evidence.)

Mr. Knuff: I would like to have marked for Identification Government's Exhibit 748, the same being a carbon

copy of a letter dated July 19, 1934, addressed to Mr. C. O. Brown, and signed Board Survey Company.

(The document referred to was marked as Government's Exhibit No. 748 for Identification.)

Mr. Knuff: It is admitted by USG that this letter is an authentic letter, and the original of it was sent.

We offer Exhibit 748 in evidence.

Justice Stephens: Received in evidence as binding on USG only.

(The document referred to, marked as Government's Exhibit No. 748, was received in evidence.)

Mr. Knuff: I would like to have marked for Identification Government's Exhibit 749, the same being a letter dated July 31, 1934, addressed to Mr. H. F. Sadler, and signed Warren Henley.

6483

(The document referred to was marked as Government's Exhibit No. 749 for Identification.)

Mr. Knuff: USG refuses to admit or deny the authenticity of this document, but they do admit that it came from their files.

We offer it as being circumstantially identified.

Justice Stephens: If there is no objection as to circumstantial identification, it is received as binding on USG only.

(The document referred to, marked as Government's Exhibit No. 749, was received in evidence.)

Mr. Knuff: Omit the next two exhibits, please, and come to the one dated 9/13/35.

We would like to have marked for Identification Government's Exhibit 750, the same being a complaint addressed to the Board Survey Company, signed by Certain-teed Products Corporation, dated September 13, 1935.

(The document referred to was marked as Government's Exhibit No. 750 for Identification.)

Mr. Knuff: In connection with this exhibit, USG admits that this is a reply received from the Certain-teed Products Corporation by Board Survey Company.

6484

Justice Stephens: This is received as binding on USG only.

Mr. Bromley: It is not a complaint, it is the explanation.

Justice Stephens: We noticed that.

(The document referred to, marked as Government's Exhibit No. 750, was received in evidence.)

Mr. Knuff: I would like to now have marked for Identification the two exhibits that I skipped, as Exhibits 751 and 752. Exhibit 751 is a document dated September 3, 1935, addressed to the Board Survey Company and signed USG. Exhibit 752 is a document addressed to Certain-teed Products Corporation, and has typed thereon "Board Survey Company—Executive Secretary.", dated September 3, 1935.

(The documents referred to were marked as Government's Exhibits Nos. 751 and 752, respectively, for Identification.)

Mr. Knuff: We offer Government's Exhibits 751 and 752 as being circumstantially identified by Exhibit 750.

Justice Stephens: Unless there is objection to the circumstantial identification claimed, the two exhibits
6485 are received as binding on USG only.

(The documents referred to, marked as Government's Exhibits Nos. 751 and 752, respectively, were received in evidence.)

Mr. Knuff: Omit the next one and come to the letter of April 13, 1932.

I would like to have that letter marked for Identification as Government's Exhibit No. 753.

(The document referred to was marked as Government's Exhibit No. 753 for Identification.)

Mr. Knuff: That is a carbon copy of a letter dated April 13, 1932, addressed to M. H. Baker, and signed Board Survey Company.

USG admits the genuineness of this letter and the sending of the original thereof.

We offer it in evidence.

Justice Stephens: This is received as binding on USG only.

(The document referred to, marked as Government's Exhibit No. 753, was received in evidence.)

Mr. Knuff: We would like to have marked for Identification Government's Exhibit 754, the same being a
6486 letter dated April 5, 1932, addressed to Frank M. Miller, and signed Warren Henley.

(The document referred to was marked as Government's Exhibit No. 754 for Identification.)

Mr. Knuff: USG neither admits nor denies the genuineness of this document, but they do admit that it came from their files. It is offered as being circumstantially identified by Government's Exhibit 753.

Justice Stephens: If there is no objection to the circumstantial identification alleged, it is received in evidence as binding on USG only.

(The document referred to, marked as Government's Exhibit No. 754, was received in evidence.)

Mr. Knuff: Omit the next letter, and come to the letter dated August 10, 1932. That letter of August 10 has on the top of it a rather large "F 8/30".

Justice Stephens: It is marked Exhibit No. 43, isn't it, in your Request for Admissions?

Mr. Knuff: That is right, Your Honor. I would like to have that letter marked Government's Exhibit 755 for Identification, the same being a carbon copy of a letter dated August 10, 1932, addressed to M. H. Baker, and signed Board Survey Company.

6487 (The document referred to was marked as Government's Exhibit No. 755 for Identification.)

Mr. Knuff: USG admits the genuineness of this document, and admits that the original thereof was sent.

We offer it in evidence.

Justice Stephens: Received as binding on USG only.

(The document referred to, marked as Government's Exhibit No. 755, was received in evidence.)

Mr. Knuff: I would like to have marked for Identification Government's Exhibit 756, the same being a letter dated August 10, 1932, addressed to F. M. Miller, and signed H. F. Sadler.

(The document referred to was marked as Government's Exhibit No. 756 for Identification.)

Mr. Knuff: I would also like to have marked for Identification Government's Exhibit 757, the same being a letter dated August 23, 1932, addressed to Mr. F. M. Miller and signed M. H. Baker—MP.

(The document referred to was marked as Government's Exhibit No. 757 for Identification.)

Mr. Knuff: USG refuses to admit or deny the
6488 genuineness of 756 and 757, although they do admit that both 756 and 757 came from their files.

We offer 756 and 757 as being circumstantially identified by 755.

Justice Stephens: If there is no objection to their circumstantial identification, Exhibits 756 and 757 are received as binding on USG only.

(The documents referred to, marked as Government's Exhibits Nos. 756 and 757, respectively, were received in evidence.)

Mr. Knuff: I would like to have marked for Identification Government's Exhibits 758 and 759.

(The documents referred to were marked as Government's Exhibits Nos. 758 and 759, respectively, for Identification.)

Mr. Knuff: Government's Exhibit 758 is a letter dated October 13, 1932, addressed to Frank M. Miller and signed Warren Henley.

Government's Exhibit 759 is a copy of a letter dated October 31, 1932, addressed to R. F. Burley and signed Board Survey Company.

USG admits receiving 758, and admits sending the original of 759. We offer in evidence Government's
6489 Exhibits 758 and 759.

Justice Stephens: These are received as binding on USG only.

(The documents referred to, marked as Government's Exhibits Nos. 758 and 759, respectively, were received in evidence.)

Mr. Knuff: I would like to have marked for Identification Government's Exhibit 760, the same being a carbon copy of a letter dated December 20, 1932, addressed to Mr. M. H. Baker, President, and signed Board Survey Company.

(The document referred to was marked as Government's Exhibit No. 760 for Identification.)

Mr. Knuff: I would also like to have marked Government's Exhibit 761, the same being a letter dated January

9, 1933, addressed to Board Survey Company and signed by National Gypsum Company—Vice President.

(The document referred to was marked as Government's Exhibit No. 761 for Identification.)

Mr. Knuff: We offer in evidence Government's Exhibits 760 and 761. USG admits the authenticity of 760, and admits sending the original of 760. As to 761, they neither admit nor deny the authenticity or the receipt of
6490 this letter. They do admit that it came from their files.

We offer Government's Exhibit 761 as being circumstantially identified by Exhibit 760.

Justice Stephens: Let the Court read them.

(Government's Exhibits 760 and 761 for Identification examined by the Court.)

Justice Stephens: Unless there is some objection to the circumstantial identification of Exhibit 761, both exhibits 760 and 761 are received in evidence as binding on USG only.

(The documents referred to, marked as Government's Exhibits Nos. 760 and 761, respectively, were received in evidence.)

Mr. Knuff: I would like to have marked for Identification Government's Exhibit 762, the same being a letter dated April 15, 1933, addressed to Mr. F. M. Miller and signed in typewriting H. F. Sadler.

(The document referred to was marked as Government's Exhibit No. 762 for Identification.)

Mr. Knuff: I would also like to have marked for Identification Government's Exhibit 763, the same being a copy of a letter dated April 17, 1933, addressed to National Gypsum Company and signed Board Survey Company.

6491 (The document referred to was marked as Government's Exhibit No. 763 for Identification.)

Mr. Knuff: I would also like to have marked for Identification Government's Exhibit No. 764, the same being a letter dated May 1, 1933, addressed to Frank M. Miller, and signed National Gypsum Company, R. F. Burley, Vice President.

(The document referred to was marked as Government's Exhibit No. 764 for Identification.)

Mr. Knuff: We offer in evidence Government's Exhibits 762, 763 and 764.

With reference to Exhibits 763 and 764, USG admits the genuineness of the letters; and in regard to 763, the fact that it was sent; and as to 764, they admit that that letter was received.

In so far as 762 is concerned, USG neither admits nor denies as to it. They do admit that it came from their files. We offer 762 as being circumstantially identified by 763 and 764.

Justice Stephens: Unless there is some objection to the circumstantial identification of Exhibit 762, Exhibits 762, 763 and 764 are received in evidence as binding on USG only.

(The documents referred to, marked as Government's Exhibits Nos. 762, 763 and 764, respectively, were received in evidence.)

6492

Mr. Knuff: I would like to have marked for Identification Government's Exhibit 765, the same being a letter dated April 21, 1933, addressed to Mr. F. M. Miller and signed H. F. Sadler.

(The document referred to was marked as Government's Exhibit No. 765 for Identification.)

Mr. Knuff: I would also like to have marked for Identification Government's Exhibit 766, the same being a carbon copy of a letter dated July 31, 1933, addressed to National Gypsum Company and signed Board Survey Company.

(The document referred to was marked as Government's Exhibit No. 766 for Identification.)

Mr. Knuff: I would also like to have marked for Identification Government's Exhibit 767, the same being a letter dated August 9, 1933, addressed to Board Survey Company and signed National Gypsum Company, R. F. Burley—B.

(The document referred to was marked as Government's Exhibit No. 767 for Identification.)

Mr. Knuff: We offer Government's Exhibits 765, 766 and 767 in evidence.

6493

In so far as Exhibit 766 is concerned, USG admits the genuineness of the letter and the fact that the

original of it was sent. In so far as 765 and 767 are concerned, USG neither admits nor denies the genuineness of the documents. They do admit that they came from the files of USG. Exhibits 765 and 767, we say, are circumstantially identified by 766.

Justice Stephens: Unless there is some objection to the circumstantial identification of Exhibits 765 and 767, all three exhibits are received in evidence as binding upon USG only.

(The documents referred to, marked as Government's Exhibits 765, 766 and 767, were received in evidence.)

Mr. Knuff: We would like to have marked for Identification Government's Exhibit 768, the same being a complaint dated June 23, 1936, addressed to Board Survey Company, and signed United States Gypsum Company, H. F. Sadler.

(The document referred to was marked as Government's Exhibit No. 768 for Identification.)

Mr. Knuff: I would also like to have marked for Identification Government's Exhibit 769, the same being a letter dated November 11, 1936, addressed to Scott, MacLeish & Falk, and signed National Gypsum Company, R. F. Burley—B.

6494 (The document referred to was marked as Government's Exhibit No. 769 for Identification.)

Mr. Knuff: USG admits the genuineness of and the fact that Exhibit 768 was sent; and they admit that 769 was received by them.

We offer 768 and 769 in evidence.

Justice Garrett: Exhibit 769 seems to be addressed to Scott, MacLeish & Falk. Where do they come into this case?

Mr. Knuff: I presume they were Board Survey Company's attorneys at this time, I don't know.

Mr. Bromley: That is right.

Justice Stephens: Both exhibits are admitted in evidence as binding on USG only.

(The documents referred to, marked Government's Exhibits 768 and 769, were received in evidence.)

Mr. Knuff: We would like to have marked for Identification Government's Exhibit 770, the same being a carbon

copy of a letter dated May 21, 1935, addressed to Warren Henley, and signed Board Survey Company.

(The document referred to was marked as Government's Exhibit No. 770 for Identification.)

Mr. Knuff: We would also like to have marked for Identification Government's Exhibit 771, the same
6495 being a letter dated June 11, 1935, addressed to Mr. E. W. Carey and signed Warren Henley.

(The document referred to was marked as Government's Exhibit No. 771 for Identification.)

Mr. Knuff: We offer in evidence Government's Exhibits 770 and 771. USG admits the fact that the original of 770 was sent, and the genuineness thereof; and they admit receiving 771.

Justice Stephens: Received in evidence as binding against USG only.

(The documents referred to, marked as Government's Exhibits 770 and 771, were received in evidence.)

Mr. Knuff: I would like to have marked for Identification Government's Exhibit 772, the same being a carbon copy of a letter dated June 14, 1935, addressed to Mr. Warren Henley, and signed Board Survey Company.

(The document referred to was marked as Government's Exhibit No. 772 for Identification.)

Mr. Knuff: I would also like to have marked for Identification Government's Exhibit 773, the same being a letter dated June 19, 1935, addressed to E. W. Carey and signed Warren Henley.

6496 (The document referred to was marked as Government's Exhibit No. 773 for Identification.)

Mr. Knuff: We offer in evidence Government's Exhibits 772 and 773. USG admits that they received Governments' Exhibit 773. USG neither admits nor denies that Government's Exhibit 772 was written by them, but they do admit that it was taken from their files.

We contend that Government's Exhibit 772 is circumstantially identified by Government's Exhibit 773 for Identification.

Justice Stephens: Unless there is objection to the circumstantial identification of 772, both exhibits are received in evidence as binding against USG only.

(The documents referred to, marked Government's Exhibits Nos. 772 and 773, were received in evidence.)

Mr. Knuff: I would like to have marked for Identification Government's Exhibit 774, the same being a complaint dated June 22, 1936, addressed to the Board Survey Company and signed United States Gypsum Company, H. F. Sadler.

(The document referred to was marked as Government's Exhibit No. 774 for Identification.)

Mr. Knuff: I would also like to have marked for
6497 Identification Government's Exhibit 775, the same being a carbon copy of a letter dated July 16, 1936, addressed to Certain-teed Products Corporation, and unsigned.

(The document referred to was marked as Government's Exhibit No. 776 for Identification.)

Mr. Knuff: I would also like to have marked for Identification Government's Exhibit 776, the same being a copy of a reply addressed to the Board Survey Company, dated July 29, 1936, and signed by Certain-teed Products Corporation.

(The document referred to was marked as Government's Exhibit No. 776 for Identification.)

Mr. Knuff: We now offer in evidence Government's Exhibits 774, 775 and 776. USG admits that Government's Exhibit 774 for Identification is a genuine document, and that it was sent by USG. They admit that Exhibit 776 was received by the Board Survey Company. In so far as Exhibit 775 is concerned, they neither admit nor deny the genuineness of the document, but they do admit that it was taken from their files.

We say that Government's Exhibit 775 is circumstantially identified by Government's Exhibits 774 and 776.

Justice Stephens: The first of these, in date, is 775, isn't it?

6498 Mr. Knuff: The first in date is 774, June 22, 1936.

Justice Stephens: That is right.

Let us read these.

(Government's Exhibits 774, 775 and 776 for Identification examined by the Court.)

Justice Stephens: Who does 775 purport to be from?

Mr. Knuff: I think that is from an attorney by the name of Mahan. I am not quite sure of the name.

Mr. Bromley: C. B. Mahin, connected with the firm of Scott, MacLeish & Falk; and Scott, MacLeish & Falk were then acting as attorneys for Board Survey.

Justice Stephens: Unless there is some objection to the circumstantial identification referred to, the three exhibits are received in evidence as binding against USG only.

(The documents referred to, marked Government's Exhibits Nos. 774, 775 and 776, respectively, were received in evidence.)

Mr. Knuff: I would like to have marked for Identification Government's Exhibit 777, the same being a carbon copy of a letter dated May 17, 1933, addressed to M. H. Baker, and signed Board Survey Company.

(The document referred to was marked as Govern-
6499 ment's Exhibit No. 777 for Identification.)

Mr. Knuff: We would also like to have marked for Identification Government's Exhibit 778, the same being a letter dated May 22, 1933, addressed to Board Survey Company and signed National Gypsum Company, R. F. Burley, Vice President.

(The document referred to was marked as Government's Exhibit No. 778 for Identification.)

Mr. Knuff: USG admits the genuineness and the sending of the original of Government's Exhibit 777; and admits receiving Government's Exhibit 778.

We offer Government's Exhibits 777 and 778 in evidence.

Justice Stephens: Received in evidence as binding against USG only.

(The documents referred to, marked Government's Exhibits 777 and 778, were received in evidence.)

Mr. Knuff: We would like to have marked for Identification Government's Exhibit 779, the same being a letter dated October 31, 1932, addressed to Board Survey Company and signed National Gypsum Company, R. F. Burley, Vice President.

(The document referred to was marked as Government's Exhibit No. 779 for Identification.)

Mr. Knuff: We would also like to have marked
6500 for Identification Government's Exhibit 780, the same being a carbon copy of a letter dated November 21, 1932, addressed to F. G. Krumholz, and signed Board Survey Company.

(The document referred to was marked as Government's Exhibit No. 780 for Identification.)

Mr. Knuff: USG admits receiving 779, and admits the genuineness and the sending of the original of Government's Exhibit 780.

We offer Exhibits 779 and 780 in evidence.

Justice Stephens: Received in evidence as binding on USG only.

(The documents referred to, marked as Government's Exhibits 779 and 780, were received in evidence.)

Justice Garrett: Let me inquire. In 779, reference is made to the Universal Gypsum Company.

Mr. Knuff: The Universal Gypsum Company, at that time, was a licensee of USG. Universal afterwards was taken over by National.

Justice Garrett: Oh, yes. I had forgotten just what that connection was. Thank you.

Mr. Knuff: I would like to have marked for Identification Government's Exhibit 781, the same being a memo-
6501 randum dated July 20, 1933, addressed to Mr. F. M. Miller and signed in typewriting H. F. Sadler.

(The document referred to was marked as Government's Exhibit No. 781 for Identification.)

Mr. Knuff: I would also like to have marked for Identification Government's Exhibit 782, the same being a carbon copy of a letter dated July 29, 1933, addressed to National Gypsum Company, and signed Board Survey Company.

(The document referred to was marked as Government's Exhibit No. 782 for Identification.)

Mr. Knuff: I would also like to have marked for Identification Government's Exhibit 783, the same being a letter dated August 9, 1933, addressed to the Board Survey Company, and signed National Gypsum Company, R. F. Burley—B.

(The document referred to was marked as Government's Exhibit No. 783 for Identification.)

Mr. Knuff: I would also like to have marked for Identification Government's Exhibit No. 784, the same being a

carbon copy of a letter dated September 12, 1933, addressed to R. F. Burley and signed Board Survey Company.

(The document referred to was marked as Government's Exhibit No. 784 for Identification.)

6502 Mr. Knuff: We offer in evidence Government's Exhibits 781, 782, 783 and 784.

In so far as Government's Exhibit 782 is concerned, USG admits the genuineness of the document and the fact that the original of it was sent.

USG likewise admits the genuineness of 784, and the fact that the original of that document was sent.

In so far as Exhibits 781 and 783 are concerned, USG neither admits nor denies the genuineness of the document, but they do admit that 781 and 783 were taken from their files.

We contend that 781 and 783 are circumstantially identified by 782 and 784.

Justice Stephens: Unless there is some objection to the circumstantial identification relied upon, all of the exhibits just mentioned are received in evidence as binding against USG only.

(The documents referred to, marked as Government's Exhibits Nos. 781, 782, 783 and 784, respectively, were received in evidence.)

Mr. Bromley: May it please the Court, I should like to ask counsel for the Government—and I think defendants are entitled to know—whether or not, with respect to Exhibits 727 to 784, inclusive, all of which I believe are of the
6503 type of Exhibit 784 and the preceding ones, he is offering these exhibits to prove that the defendants fixed prices on paints, or roofing products, or insulating board, or Maftex board, or building paper, or insulating board seconds, or Color Texture, or fiber board? I have looked over these exhibits and find that most of them have to do with the products which I have mentioned.

For instance, Exhibit 742 and Exhibit 743 have to do with a reduction below the going market price of roofing products. Exhibits 750, 751 and 752 have to do with a rebate on patented board effected through a reduction in the market price of building paper. Exhibits 755, 756, 757 and 767 have to do with an alleged rebate on patented board effected through a reduction of the price charged for paints.

Exhibits 753, 754, 760, 761, 762, 763, 764, 765, 766, 767, 768 and 769 have to do with rebates effected through price

reductions on insulation board, which is a wood product, the record shows, having nothing to do with gypsum whatsoever.

It seems to me that we are entitled to know whether the Government is now trying to prove price fixing beyond what is alleged in the complaint, which, on its broadest interpretation, I think, is limited to plaster and Keene's Cement and block and tile.

Mr. Knuff: Since we have not alleged in the complaint that they did fix the price of roofing materials or
6504 paint, or Maftex, or what-not, of course we are not offering these exhibits to prove that. We are offering these exhibits for the purpose of showing subterfuge under Paragraph 46 of the complaint.

Justice Garrett: Let me ask you, then, why did you introduce the answers? As I read the answers that you have introduced in here, to these various complaints, they are practically all of them denials.

Mr. Bromley: That is right.

Justice Garrett: You have your own reasons for it, I suppose.

Mr. Knuff: I wanted to bring to the attention of the Court the fact that USG was sending it out, and also to bring to the attention of the Court the fact that the person to whom they were sending it got it.

Justice Jackson: It just seems that you did, you didn't—you did, you didn't.

Mr. Knuff: That is right, but I think it does show subterfuge, and we will be prepared to argue that when the time comes.

Justice Stephens: What is the theory of the Government, briefly, that it proves subterfuge?

Mr. Knuff: That what the defendants actually did, by policing the alleged sale of patented board, indicates quite clearly what the defendants had in mind, what they
6505 intended to accomplish by the policing of the licensing agreements. We contend that the agreements were simply a cloak or a smoke screen or a subterfuge to cover up and conceal the real purpose of the defendants. The real purpose is set forth in Paragraphs 44 and 45 of the complaint, that is, to regiment the gypsum industry and thereby to restrain, dominate and control the manufacture and distribution of gypsum products.

Justice Stephens: I think I see your purpose.

The exhibits are not received as evidence of price fixing on the items just referred to by Mr. Bromley, the Govern-

ment conceding that they are not offered for that purpose.

Mr. Knuff: Shall we take the afternoon recess at this time?

Justice Stephens: Yes.

(Thereupon, a short recess was taken, after which the trial was resumed as follows:)

6506 Mr. Knuff: Your Honors, omit the next two items in your list, the letter of July 14, 1933, and the letter of July 25, 1933, and that brings us down to what I would like to have marked as Government's Exhibit 785 for identification, the same being a carbon copy of an inter-office memorandum, dated July 24, 1933, addressed to Mr. E. A. Gallagher, and signed H. F. Sadler.

(The document referred to was marked as Government's Exhibit No. 785 for identification.)

Mr. Knuff: USG admits the authenticity of this exhibit, and the sending of the original thereof.

We offer in evidence Government's Exhibit 785.

Justice Stephens: Unless there is objection, it is received in evidence as binding on USG only.

(The document referred to, marked as Government's Exhibit No. 785, was received in evidence.)

Mr. Knuff: At this time we would like to reoffer, if your Honors please, Government's Exhibit 271, and in connection with this matter, I just want to make a very short statement.

Justice Stephens: Let us get the exhibit before us, first, so we can have it in mind.

All right, proceed, Mr. Knuff.

6507 Mr. Knuff: Government's Exhibit 271 for identification was offered at about the time the North Holston and Laramie and the other contracts were offered, and there were reserved rulings on all of those.

We subsequently made an offer on those, and I think that in general our offer was sustained. At the time we made the offer, we did not include in that offer Exhibit 271, thinking that the offer was to be more or less of a—for want of a better word, sort of a "guinea pig" offer—and that everything else that related to it would come in after the offer was made. We thought that the ruling of the Court on the offer would cover the exhibits on which the ruling was deferred.

This was reoffered again at page 3272 of the record, and

was withdrawn. We would now like to reoffer Exhibit 271 for the purpose of showing intercompany sales.

Justice Jackson: It wasn't rejected by the Court, was it?

Mr. Knuff: No sir, it was not.

Justice Jackson: Did it comprise any part of the reserve rulings?

Mr. Knuff: It was a part of the reserve rulings at that time.

Justice Stephens: We ruled, in the reserve rulings, in favor of your contentions with respect to certain
6508 contracts involving the North Holston and Laramie plants, but I don't think we have any rulings suspended now except the ruling on Exhibit 233.

Mr. Knuff: When your Honors made the ruling, your Honors called our attention to the fact that Government's Exhibits 239, 240, 271, 272, and 273 were considered as not offered, and the Court called our attention to that fact.

Now in so far as Exhibits 239, 240, 272 and 273 are concerned, while we think they are material, we are not going to press the offer of them. But we do feel that Exhibit 271 should now be reoffered.

Justice Stephens: Is there any objection to Exhibit 271, in view of the reserved rulings on the North Holston and Laramie matters? I assume you have the same objections, Mr. Bromley, but is there anything new in the way of an objection?

Mr. Bromley: No—we object to it as immaterial and irrelevant. This hasn't anything to do, of course, with North Holston or Laramie.

Justice Stephens: Let me see those reserve rulings and reference to these exhibits, Mr. Cantor.

(The matters requested were handed to Justice Stephens by Mr. Cantor.)

(The Justices conferred.)

Justice Stephens: It would seem to me, Mr. Brom-
6509 ley, that 271 should be admitted if there is no dispute as to its authenticity, in view of the ruling of the majority of the Court that these intercompany purchases of board were admissible under the charges in the complaint.

Mr. Bromley: Yes, I think that is right.

Justice Stephens: So, unless there is some objection as to authenticity of the letter, Exhibit 271 is received in evidence according to the ruling of the majority on the subject of gypsum products asserted to have been purchased by

one defendant from another, and thereafter sold at bulletin prices, as alleged.

(The document referred to, marked as Government's Exhibit No. 271, was received in evidence.)

Mr. Bromley: That would be subject to the usual reservation, I take it?

Justice Stephens: Yes, received subject to the usual reservation with respect to declarations of alleged co-conspirators.

Mr. Steffen: We have reached practically the end of the Government's case, your Honor. I want to make reference to one or two matters, however.

We have taken up Exhibit No. 693 to determine whether the signature of M. H. Baker is a genuine signature or not, and we are prepared to prove, by putting on a wit-
6510 ness, a handwriting expert, from the FBI, that the signature of M. H. Baker on Exhibit 693 is genuine. I want to make only a brief statement in that connection. I don't think anybody in the room doubts that it is genuine. It has been admitted by National, and the item comes from the files of USG. Moreover, National, in their answer to our requests to admit, stated that Mr. Baker couldn't add anything if he were on the stand. So we think it is perfectly fair, if the defendants want to put us to that bother, to—

Justice Stephens: (Interposing) My records indicate that Exhibit No. 693 has been received for a limited purpose.

Mr. Steffen: That is right, your Honor. The only thing that prevented it from being received generally was that the signature of Mr. Baker was not deemed proven as respects others than National.

Justice Stephens: In other words, this is one of the exhibits that we took in because the admission of authenticity was limited to the person making the admission?

Mr. Steffen: That is right.

Justice Stephens: Now you want to put a witness on to prove the signature of Baker?

Mr. Steffen: Yes, although I don't have the witness here at the moment. However, I can have him here in the morning. We have taken it up with the FBI, and they have given us a memorandum indicating that they have
6511 examined that signature in the light of five or six other signatures that have already been admitted, signatures of Baker, two of them being on license agreements, and the others on letters that have been admitted and

identified; and they will establish without question that this is Mr. Baker's signature.

With that point established, then the item is admissible in all respects.

As I said, I think it is perfectly fair to the defendants, because there isn't any real issue on Mr. Baker's signature, and there isn't any question, according to National's answer, that Mr. Baker would not be prepared to say anything about the letter, anyhow, if he were on the stand.

Mr. Johnston: As I understand it, all this expert witness would do would be to identify the signature of Baker, and it has already been admitted, so far as National is concerned?

Mr. Steffen: Yes, but we want it now identified so that Mr. Johnston, for example, can cross-examine the person identifying it.

Mr. Johnston: I don't want to cross-examine him, I want to cross-examine Baker.

Justice Stephens: I think Mr. Steffen's contention is this. The Court ruled that when you identify a signature by an admission of a defendant, that identification can only bind persons making the admission, and no one else;
6512 but if the signature is identified in the courtroom in some other manner, there might be a different result.

Mr. Keber: If the Court pleases—

Justice Stephens: (Interposing) We have had a great many signatures identified on the witness stand by "A", who identifies "B's" signature, and there has been no objection to the introduction of those under those circumstances.

Now, Mr. Keber.

Mr. Keber: I was about to say that I thought that the scope of the request for the admission was not only as to the identification of the signature, but also the fact that the letter was sent. Now I don't know whether that is being unreasonably narrow, perhaps it is, but I don't think that the handwriting expert can prove that fact.

Mr. Steffen: It is immaterial, your Honor, whether that is proven or not, because this would be admitted as a declaration of Mr. Baker, and as I understand it, moreover, it was taken from the files of USG. Therefore, the matter of whether it was sent or not is pretty well established by other evidence than the admission of National.

Mr. Bromley: So far as the defendants represented by me are concerned, I am willing to stipulate that if the Government called a handwriting expert he would identify the signature as Baker's.

Justice Jackson: How many defendants does that
6513 not include?

Mr. Keber: I will make the same stipulation.

Justice Stephens: Will the other defendants stipulate as to that?

Mr. Johnston: I don't want to be unreasonable with the Government. They are getting pretty low now, and I will just withdraw my objection and let Mr. Bromley's stipulation cover me also. (Laughter.)

Justice Stephens: The Court will take it then, unless some defendant's counsel rises and objects, that each defendant has stipulated that if a handwriting expert were called by the Government, he would testify that the signature on Exhibit 693 is that of Baker.

Mr. Steffen: We now offer Government's Exhibit 693 generally as a declaration of an alleged co-conspirator.

Mr. Bromley: We make the usual objection.

Justice Stephens: Received, subject to the usual reservation with respect to declaration of alleged co-conspirators.

(The document referred to, marked as Government's Exhibit No. 693, was received in evidence.)

Mr. Steffen: The next matter that is at loose ends is the Dowd matter. I don't know what attitude the defendants wish to take about that. I may say that from
6514 the standpoint of the Government I think we would be willing to rest without introducing Exhibit 233, providing we have the privilege at a later date, if and when Mr. Dowd is called, to offer Exhibit 233, to reopen our proof and introduce that one exhibit.

Justice Jackson: And you would withdraw it now with that understanding, would you, or would you just let the record stand the way it is?

Mr. Steffen: Let it stand as it is now.

But what I am saying is that we could rest our case without having it really admitted as part of our case for purposes of a motion to dismiss, if there is to be such a motion, with the understanding that we can reopen our case and introduce that one exhibit if and when Mr. Dowd is called, and if and when the Court decides that there was a waiver of the attorney-client privilege.

Mr. Johnston: I don't understand all the strings to that. You are just not going to go any further about Mr. Dowd?

Mr. Steffen: I am being very generous at the moment, I am saying that we are prepared to rest so far as Exhibit 233 is concerned, but I would like to have the privilege

of introducing it later if and when Mr. Dowd could be brought here, and when the Court decides—

Mr. Johnston: (Interposing) That is the point I am interested in—there might not be any "later".

6515 Justice Stephens: The Court must know whether Mr. Dowd's testimony is going to be introduced before the close of the Government's case or not. We have ruled that if the defendants want to call him before the close of the Government's case, they may do so. They may also urge, if they wish to do so, that the Government has not connected that matter, hasn't connected Exhibit 233 with Certain-teed. That matter, I don't think, has been put before the Court for formal ruling.

The testimony of Mr. Speer was introduced for the purpose of connecting Exhibit 233 with Certain-teed, showing that Redfield's act in writing it was the act of Certain-teed; so if there were an adverse decision on that, it wouldn't be necessary to call Dowd; whereas, if there were an affirmative decision on that, the defendants would still have a right to call Dowd, and complete the voir dire hearing on the preliminary question of fact bearing upon the admissibility of the evidence.

We ought to finish the Government's case before the Government rests, I should think.

Mr. Steffen: I think, your Honor, as I visualize it, it is up to the defendants to complete the examination on voir dire. We introduced Mr. Redfield, and he made his statement to the effect that he had a telephone conversation.

That telephone conversation, left by itself, would 6516 indicate that there was a waiver of the attorney-client privilege. That, however, as your Honor pointed out, was on voir dire, and it is therefore up to the defendants, on their part of the voir dire, to bring on Mr. Dowd and have him state whether or not he had the conversation.

Justice Stephens: That is right.

Mr. Steffen: There is nothing we can do about it.

Justice Stephens: That is right, Mr. Steffen, and that was the Court's ruling, but the Court ruled also, under an objection made by Mr. Bromley, that there wasn't in the record, at the time of the announcement of our ruling on Exhibit 233, any evidence that Certain-teed adopted or acted upon Redfield's letter, Exhibit 233, in any such manner as would make Redfield's act its act, and I thought that what you were going forward with under the Speer testimony, was to try to prove that.

I thought we had excluded, under the ruling of Judge Jackson and Judge Garrett and myself—all three of us, as I remember—all of the testimony of Speer except the items of testimony which went to subterfuge, which was another topic. If that is true, and if the Court should rule that the Government has not yet connected Exhibit 233 with Certain-teed, then the defendants might not have to call Dowd unless the Government wants to make some other effort to connect it, or unless the Government can be
6517 successful in its contention that it has connected it.

Mr. Steffen: May I make a statement upon that?

Justice Stephens: Yes, surely.

Mr. Steffen: The connection that we felt we had made was the various conversations between Mr. Speer on the one hand and Mr. Redfield and Mr. Chaffee on the other. Now it is true that those were the conversations that your Honors struck out as being privileged, the reason being that there had not been shown to be a waiver.

Of course we are in a position where we can't show a waiver until your Honors will act upon or decide that Mr. Redfield's telephone conversation with Mr. Dowd constituted a waiver. In other words, that matter is doubly-loaded, as it stands right now. Our connection is also dependent now upon what Mr. Dowd will say. If Mr. Dowd says, "I don't remember that conversation," and nothing more, and your Honor says, "Well, in that position of the evidence we have one man saying positively that he did have the conversation and another man saying that he didn't, and that that constitutes a waiver"—then it constitutes a waiver also of the conversation which was had with Mr. Redfield and which constituted the connection.

The two things are now both, as I see it, dependent on what is to be decided by Mr. Dowd on the stand, or rather what is to be testified to by Mr. Dowd on the stand.

6518 Justice Stephens: I thought we ruled adversely to you on that. I thought the Court, through the Presiding Judge—and I thought my colleagues agreed with me—held quite clearly the other day that although the waiver of privilege with respect to a document, like Exhibit 233, might include a waiver of the conversation out of which that particular document grew, so that that conversation might be said to be merged in that document, that it didn't, however, include a waiver of other or different conversations not so closely connected with the document as to be said to be merged in it, in the event of a waiver.

I have had perfectly clearly in my mind that even if the Court should decide, after hearing Mr. Dowd, that the Redfield-Dowd conversation did take place, and did contain the words which Redfield testified it contained, that still the Government would have to prove that Exhibit 233 was more than the act of Redfield, and that it would have to do it by evidence. I thought that that was what the Government was trying to do through Speer, and that it had failed to do so because the conversations on which it relied to prove that, were stricken out.

Mr. Steffen: Of course you have us in that situation—I don't mean to say that the Court has us in that situation, but we are in that situation, and what I want to say is that it looks very unfair from my standpoint, for the
6519 reason that if we start with the proposition that the Court will hold that there was a waiver of the attorney-client privilege, if Mr. Dowd is put on the stand and testifies as I hope he will, then the connection that we would have would be Mr. Speer's conversations with Mr. Redfield. Now they have been ruled out at the moment as being privileged, as I understand it.

But your Honor's statement just now, to the effect that if the document was not privileged, and Mr. Redfield could testify, then the testimony of Mr. Speer of his conversations with Mr. Redfield, which closely connected Certain-teed and Redfield, would be admissible as conversations, although ordinarily privileged, not privileged in this case because Mr. Redfield had generally been relieved of the privilege by the Dowd-Redfield conversation.

Justice Jackson: You mean then that that conversation would be actually merged in the writing, Exhibit 233?

Mr. Steffen: That is right, and we argued, as I remember, when the thing came up, that we would like to have had your Honors withhold ruling on that piece of evidence, that is the conversation between Mr. Speer and Mr Redfield which tied the transaction up with Certain-teed, and if we could have had that withheld, until we got a ruling on the voir dire, then it could have fallen either way, depending on which way you decided, whether or not this
6520 was a waiver of the conversation.

Justice Stephens: I am afraid there is a very deep misunderstanding between Government counsel and the Presiding Judge as to what we did the other day and why we did it.

I didn't have in mind at all, Mr. Steffen, that there was any conversation testified to by Mr. Speer which was so closely connected with the execution of Exhibit 233 that it could be said to be merged in it if Exhibit 233 was waived, so far as privilege was concerned. I thought all the conversations that Speer testified to before the Court were general conversations with counsel with respect to the advisability of using the Speer contrivance, or the Speer product, and it wasn't my understanding that those conversations approached anything that could be merged in Exhibit 233.

Do the defendants wish to be heard on this matter?

Mr. Bromley: Simply to point out that Speer testified that he had been in Europe two months prior to the time of Exhibit 233, and as your Honor has suggested, he didn't suggest, even by indirection, that he ever had any talks about Exhibit 233; he never heard of it or saw it; he knew nothing about it at all; and there is nothing in what he said as to his conversations with Redfield which could have any possible bearing on something that didn't come into existence for several months afterward.

So that it was my impression too that there was an
6521 utter and complete lack of connection in the Speer testimony, and that is the only asserted ground of connection in the record, there isn't any other.

Justice Jackson: I am sure that I would have to refresh my recollection with respect to Speer's testimony with regard to his conversations with Redfield, but I did think he said—I may be wrong—that he told Redfield that his closed-edge board could be used as a bargaining point with USG, the very thing that is in Exhibit 233. That is in my mind, I don't know whether that is correct or not.

Mr. Steffen: It is also in the transcript, your Honor.

Mr. Bromley: Didn't we set out here to have established that this company adopted or acted on this memorandum?

Justice Stephens: That is right.

Mr. Bromley: Now, assuming the accuracy of what Justice Jackson says, how does that conversation, occurring at least two months before the memorandum, show that the company adopted or acted on any suggestion contained in the memorandum? There is no evidence that they ever did use it.

Justice Jackson: I thought he said, I thought Redfield said that he represented the company when he went there.

Mr. Bromley: Yes, he did, but how does that show that

the company ever used that as a bargaining weapon with USG?

Justice Jackson: I don't think there is any evidence at all showing that it was acted upon.

6522 Mr. Bromley: Oh, no, there is not. That is where the lack of connection comes, it seems to me. If there is no evidence that the company adopted Redfield's suggestion, or acted upon it, then the memorandum has no significance whatsoever.

Mr. Steffen: The cases, as I read them, on what constitutes a declaration or an act in furtherance of a conspiracy, and therefore a declaration which is binding upon alleged co-conspirators, are not limited to a very close construction of what is in furtherance of a conspiracy, and there are a number of decisions which are simply declarative of the purposes and ideals that the parties have in mind, whether they actually carry out those identical purposes in the way suggested, or others that are similar.

The declaration here is in effect, "We should find a patent upon which we can fix prices." This was in the summer of 1929, and it was not two or more months after the Speer conversation, as Mr. Bromley said, but fairly closely after the Speer conversation.

Justice Stephens: Let me interject, if I may, in the possible hope of saving time, although I will let you finish if you wish to, after you have heard what I have said.

It seems to me now that you are going off on an entirely new subject as to whether or not if Exhibit 233 is shown to have been adopted by Certain-teed, it is a declara-

6523 tion in furtherance of a conspiracy.

I thought what we were talking about now is whether or not Exhibit 233 was adopted, whether there is evidence showing that Exhibit 233 was adopted by Certain-teed.

Exhibit 233, looked at alone, is merely the statement of Mr. Redfield. Now it can't bind Certain-teed unless Certain-teed has adopted or acted upon it, or made it its own in some manner. I thought that that was what we were dealing with, and not the effect of it after it came into evidence, as the declaration of a co-conspirator.

Mr. Steffen: I intended to address myself to that very point, your Honor.

Justice Stephens: Very well.

Mr. Steffen: The decisions on when a declaration is in furtherance of a conspiracy are not limited solely to cases

where the company acted upon the particular declaration. They may be descriptive of the broad purposes that the company has, and I can cite you 28 Fed. (2nd) 1 (1928), a decision by Judge Evans, where he is very explicit on the thing, and he reviews a number of cases, such as the Hillmon case, and others, and also cites from Jones on Evidence, and states that a declaration, whether acted upon or not, if it is descriptive of the purposes which the parties had at that time, may constitute a declaration which is deemed to be in furtherance of the conspiracy, within the Rule.

6524 Now, Mr. Redfield's memorandum, in which he said, "Let's get a patent (in effect) upon which we can fix prices, because the Utzman Patent expires on August 6"—this memorandum being written on August the second—is clearly descriptive, in my view, of the purposes which the Certain-teed people actually did have in mind, and we established that by Mr. Speer's statement.

Mr. Speer, under Mr. Adams' cross-examination, was shown to have been a promoter, a responsible man in the company; that when he went to see Redfield he acted on behalf of the company; and he testified cold, as Judge Jackson said, that he had recommended to Mr. Redfield the possibility of using his, Speer's, patents as a means for fixing prices—

Mr. Bromley: (Interposing) No, he testified to nothing of the kind.

Mr. Steffen: Excuse me—as a means of obtaining licenses from other members of the industry, and obtaining royalties for the company under them—and that, in effect, therefore, he did talk over the subject matter of Exhibit 233.

6525 Then Mr. Redfield, after Mr. Speer had left for Europe, true, Mr. Redfield on August 2nd wrote his memorandum.

Now Mr. Speer also testified that Mr. Redfield was patent counsel or patent attorney for Certain-teed, that he was in Certain-teed's office and used the Certain-teed memorandum forms for his reports.

We have other evidence in the record indicating that—in one of the George M. Brown exhibits—Mr. Redfield gave George M. Brown a memorandum in June on the whole question of the foam license agreements.

So that it was very definitely in Mr. Redfield's mind; he was more than just an outside attorney who was being

called in to give an opinion; and it was more than just an exhibit that blew in to Certain-teed—but it is descriptive of what Certain-teed really did during the summer of 1929.

Certain-teed, looking at the George M. Brown memorandum, was persuaded to take out a license under the foam, and later under the starch patents. They at that time got price-fixing based on those two patents. So that the idea of having some patent under which they could operate and under which they subsequently did operate, was definitely in their minds, although they didn't operate under this particular patent, that is perfectly true.

But the basic idea which Mr. Redfield announces, was acted upon, if you wish to take it in the very narrow
6526 sense of what constitutes a declaration in furtherance of a conspiracy.

Now if that constitutes connection, assuming that it is admissible, it of course has been stricken out by the Court's ruling for the reason that the Court held—and I think that that, as I understood it, is exactly what the ruling was—that the conversation between Mr. Speer and Mr. Redfield, whether it constituted a connection or didn't constitute a connection, would have to be stricken out for the reason that it was privileged, even though, had we a waiver established, it would be the type of conversation which gave rise to or gave meaning to Exhibit 233—and would ordinarily not, therefore, be a privileged communication.

Justice Stephens: Well, it is exactly at that point that I was unable to follow you the other day when we had a very extensive argument on exactly this same subject.

As I said then, and as I have reiterated this afternoon, it seemed to me that while the waiver of privilege with respect to a memorandum or document might waive the privilege as to the conversation out of which it arose, or as a result of which it was executed, it wouldn't waive all privilege with respect to all conversations between attorney and client on the general subject of the memorandum.

Mr. Steffen: I think the transcript will show, your Honor, that the Court's ruling struck out that conversation not for the reason that it didn't constitute a connec-
6527 tion, but for the reason that it was privileged.

Justice Stephens: That is right.

Mr. Steffen: Therefore I had felt that the matter of whether it constituted a connection or not, was still an open question.

Justice Stephens: Well, I am sorry—I have tried to be open-minded—I am sorry that you regard the Court's ruling on the subject as unfair—

Mr. Steffen: (Interposing) Your Honor—

Justice Stephens: (continuing) —I realize you don't intend to criticize, but you do obviously feel that it is unfair. I have tried hard to understand your point of view and I don't think it is a question of what I think is fair or what you think is fair. It is a question of what the Court ultimately, which must have the final authority and responsibility, thinks the law is.

I thought we had made it thoroughly clear, but perhaps we haven't. Judge Jackson may have a doubt on the matter, I don't know. Do you wish to be heard, Mr. Bromley?

Mr. Bromley: No sir, I think not.

Justice Stephens: Do you wish to call Mr. Dowd, gentlemen of the defendants?

Mr. Bromley: I don't see any necessity for it. I was about to raise that point myself. I don't see why we should waste the time involved in calling Dowd when
6528 it is perfectly plain to me that no connection has been established. I think I ought to say that I don't know of any other Redfield memorandum that is in the record, to which Mr. Steffen has referred. There isn't any.

Mr. Steffen: I refer you to Government's Exhibit 226—there is, in other words.

Justice Stephens: Is that on this same subject?

Mr. Steffen: No, your Honor. Mr. Bromley was just saying that he knew of no other memorandum mentioning Mr. Redfield, in the record.

Mr. Bromley: No, I didn't say "mentioning Mr. Redfield", I said "by Mr. Redfield". Is that an exhibit by Mr. Redfield?

Mr. Steffen: I said it was an exhibit mentioning Redfield, and that is all I said.

Mr. Bromley: You didn't put it that way, you said it was a Redfield memorandum.

Mr. Steffen: I don't believe that I stated that.

Justice Stephens: I think my colleagues agree with me that the Court would prefer that the Government not rest if this matter is left in any doubt and there might be possibly the necessity of reopening the Government's case. If Dowd is to be called he ought to be called within the Government's case.

If there is anything doubtful about the Court's ruling on the item of connection, then that ought to be clarified by some motion, possibly the defendants could move—
6529 well, 233 isn't in evidence yet, is it?

Mr. Bromley: No, your Honor.

Justice Stephens: There is nothing to move about, I guess.

As far as I am concerned, I thought the matter was closed by the thorough manner we went into it the other day; but I will be glad to consult with my colleagues during the recess.

Mr. Steffen: I will refer your Honor to page 6509 of the record, at which your Honor's ruling was made, and that, I think, simply strikes out the conversation between Mr. Speer and Mr. Chaffee on the one hand, and Mr. Redfield, which we were relying upon as connecting evidence; and I didn't think that it constituted a holding at all that that, if admitted, would constitute connection. That is, I thought the connection matter was to one side.

Justice Stephens: We ruled, when we made our original ruling on Exhibit 233, from which I read into the record, we ruled that Exhibit 233, even if the Dowd-Redfield conversation took place and contained the words that Redfield said it contained, still hadn't been connected, and that the Government would have to connect it with Redfield. In other words, we ruled that the act or utterance of "A" wouldn't be binding upon "B" unless "B" was shown to have solicited or in some manner acted upon it and made it its own.

Now you were in the process, I thought, of attempting to establish a connection through Speer, and I thought
6530 we had ruled that the Speer conversations, except those having to do with the alleged subterfuge issue, were out of the record, on motions to strike. That being true, under the present state of the record as I understand it, Exhibit 233 is not shown to have been connected, and therefore isn't in evidence.

Mr. Steffen: I think that is perfectly true, so far, and my only question is that if we could establish a waiver, then the conversations between Mr. Speer and Mr. Redfield, I had thought, would constitute the necessary connection and would not be excluded, as your Honor did on page 6509.

Justice Stephens: Well, the division between our points of view with respect to that is, to state it for, I think, the third time, that it has been my view that the immediate

conversation out of which an exhibit or document was prepared might be within the waiver of the document, but that preliminary and other conversations would not be. I thought that there was nothing in the Speer conversations, as testified to, which indicated that they were so closely connected with the execution of the document that they would be within a waiver.

We will consider the matter during the recess.

Do you have anything in addition to the Dowd difficulty?

Mr. Steffen: I have only a short statement that I would like to make and I presume I can make that in the morning?

Justice Stephens: Yes. You might furnish my
6531 law clerk, if you will, a reference to the transcript pages of Mr. Speer's testimony.

Mr. Steffen: I will do that.

Justice Stephens: Will you also take the reference, Mr. Cantor, to that case which Mr. Steffen just cited?

Mr. Cantor: Yes sir.

Justice Stephens: Announce the recess.

(Whereupon, at 4:05 o'clock, p.m., the trial was recessed until Thursday morning, April 20, 1944, at 10 o'clock a.m.)

6532 IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF COLUMBIA

Civil Action No. 8017

UNITED STATES OF AMERICA,

Plaintiff,

v.

UNITED STATES GYPSUM COMPANY; NATIONAL GYPSUM COMPANY; CERTAIN-TEED PRODUCTS CORPORATION; THE CELOTEX CORPORATION; EBSARY GYPSUM COMPANY, INC.; NEWARK PLASTER COMPANY; SAMUEL M. GLOYD, doing business under the name of TEXAS CEMENT PLASTER COMPANY; SEWELL L. AVERY; OLIVER M. KNODE; MELVIN H. BAKER; BROR H. DAHLBERG; HENRY J. HARTLEY; FREDERICK G. EBSARY; and FREDERICK TOMKINS,

Defendants.

Seventh Floor,
Internal Revenue Building,
Washington, D. C.,
Thursday, April 20, 1944.

The above-entitled cause came on for further hearing at 10:00 o'clock a.m., pursuant to adjournment, before Honorable Harold M. Stephens, Honorable Finis J. Garrett, and Honorable Joseph R. Jackson, sitting as the District Court of the United States for the District of Columbia.

APPEARANCES:

(Same as heretofore noted.)

6534 The Court read last night the case which counsel cited,—or read it this morning—28 Fed. (2d) 1,
6535 International Indemnity v. Lehman. It seems only to announce the orthodox proposition that declara-

tions which are explanatory of an act which is in furtherance of a conspiracy are admissible in evidence.

The Court has carefully read—that is, the Presiding Judge has carefully read the colloquy which took place last night between counsel and the Court with respect to Exhibit 233, and is moved to make the following very brief additional comment:

The Court doesn't want Government counsel to have been misled in any manner by the Court's ruling, and it may be that Government counsel gained the impression, in some manner, that the Court hadn't ruled on the question whether there was connection or no connection with respect to Exhibit 233. I had thought, and it seems to me now, that there can't be any real basis for misunderstanding on that subject, because at the time we announced our written ruling on 233, we held that even if the Redfield-Dowd conversation took place and contained the words of waiver which Mr. Redfield testified to, still it was necessary to show two things to make the exhibit admissible: (1) that it was an act or declaration in furtherance of the conspiracy, and (2) that it was connected in some manner so that Redfield's act in writing 233 was shown to be the act of Certain-teed. In other words, we ruled that those
6536 two elements had not yet been shown.

Now nothing has happened since then except the Speer testimony, which was relied upon to connect, and the Speer testimony was in large part stricken out. So it seems to me the Government must fairly have been advised that the Court had not ruled that there was any connection. On the contrary, it ruled that there yet was no connection.

It seems to me also that it should be very clearly borne in mind, in thinking about 233, that what the Government is claiming waiver of is waiver of privilege with respect to an exhibit, a document, and that all you attempted to show in the Redfield-Dowd conversation was that there had been a waiver of the privilege with respect to that document.

I said, in the course of our colloquy, that possibly that would include waiver of the conversation in which the document was itself prepared or as a result of which it was prepared, if you were claiming waiver of more than the mere exhibit; but that it did not seem to me that even if that were true it would involve waiver of separate conversations—that they would have to stand on their own bottom so far as the rules of evidence were concerned.

I had thought, Mr. Steffen, that when Speer was offered, he was offered not on the subject of waiver, but on the subject of connection, that you were trying to prove by Speer that Exhibit 233 was in some manner the act
6537 of Certain-teed; and that when you were trying to prove that, which is an item of connection, not an item of waiver, you were bound by the rules of evidence, and if conversations which you relied upon to prove connection were themselves privileged conversations, and not such conversations as would be within the waiver of Exhibit 233 itself—assuming that waiver to exist—that you were faced with the rules of evidence with respect to privilege.

However, I may say, on the other side, it has occurred to me, in thinking this matter over during the evening, that this might be true, Mr. Bromley—while this seems like, perhaps, again taking more time than is advisable concerning this exhibit, because it doesn't seem very important, still I am anxious to be fair and right in my rulings—I suppose the normal or ordinary way to prove that a memorandum like 233 was the act of a company would be to call someone connected with the company, an officer of the company, to testify that he solicited it, such as in this case Mr. Whittemore or Mr. Brown, or to call somebody from the company or the Board of Directors to show that after it was received it was acted upon in some manner which touched this alleged conspiracy.

But I suppose it might possibly be shown in another way, that this memorandum was the act of Certain-teed in the sense that it was solicited by Certain-teed. It would
6538 seem to me that the mere fact that a client solicits advice from a lawyer, his mere going to the lawyer and asking him to give advice or to write a memorandum, that the mere fact or such solicitation of advice wouldn't, itself, be privileged—the mere fact that a client asks a lawyer to advise him, as distinguished from the statements he makes to the lawyer in order to get the advice.

If the Speer testimony should show, by reasonable inference or directly, that he, as company engineer, was authorized by Certain-teed to present devices and products which he had devised, to their lawyers, and to obtain memoranda for the company with respect to them, then it might be urged that Certain-teed was, through Speer, soliciting the memorandum which resulted.

Now I was unable to do more, last night, than to read all these 100 or 150 exhibits that came in yesterday and the record, I haven't reread the Speer testimony. But there may be something in that point, if that is what Mr. Steffen has been urging. I hadn't understood that was what he was urging, but it occurred to me last night, after thinking over the colloquy, in a desire to be conscientiously attentive to it, that maybe that was what he was contending.

Is that what you are contending, Mr. Steffen?

Mr. Steffen: I was prepared this morning to
6539 close out the Speer matter as rapidly as possible.

I would call your attention simply to the fact that we reoffered Exhibit 233 when Mr. Speer was on the stand, and we checked last night and I don't believe there was any ruling on it.

Therefore, I will ask simply for a ruling on the reoffer of Exhibit 233, and of course that will raise the question of whether there has been sufficient connection shown. I do that simply to make our record clear.

I want to make a statement in that connection. We think Mr. Speer's testimony shows that Redfield was employed as a patent man for Certain-teed, although he may have been on the payroll of the Chaffee firm. Redfield himself stated that he was on the payroll of the Chaffee firm, and acting for Certain-teed in patent matters.

We also called Your Honors' attention, last night, to Government's Exhibit 226, which is George M. Brown's memorandum, in which he said, "I have given such consideration to Mr. Redfield's report as I have time for." His report was a report on the bubble or foam license agreement. This was in June.

Then a third item of connection, of course, would be Mr. Speer's testimony on transcript page 6452, in which he said—if you will recall, we showed him Exhibit 233, and he read it, and we asked him if he had any conversation
6540 concerning Exhibit 233, and he turned it upside down, as you will remember, and said, in effect, "Well, I remember I told Mr. Redfield that I thought my patent would make a good trading position in our dealings with USG, and that I thought the device or the edge that we made was better than the Utzman because of the distinctive feature that it has reinforced edge."

We don't think that is a privileged communication because he may or may not have been there for legal advice. That looks like straight business. But I am simply offering

this, and would like a ruling and would like to have it finished.

Justice Stephens: I may add this to what I said, with particular reference to Mr. Keber, acting for Mr. Adams. It occurred to me last night in thinking of this thing, and this morning in discussing the Speer testimony with my assistant, Mr. Cantor, that possibly Mr. Adams builded better than he knew, or worse than he knew, when he so carefully brought out the fact that Mr. Speer was company engineer and was going to Redfield to present matters, as engineer, to the company lawyer. Maybe it is a fair inference from that that 233 was requested by Speer as company engineer, and if so, that that would connect it and make it a company document.

Mr. Steffen: Our re-offer of 233 was on page 6456.

Justice Jackson: Was that subsequent to the
6541 Speer testimony, that the offer was made?

Mr. Steffen: Yes, that re-offer was made on the theory that we had connected the matter up by Mr. Speer's testimony and these other matters that I now mention.

Mr. Keber: May I just make a remark? My knowledge of this matter doesn't encompass the situation too definitely, but it seems to me that the point in showing that Mr. Speer was a company representative, of course, was in connection with the question of showing that the conversation was privileged, and that Certain-teed could raise the privilege because it was a conversation between Certain-teed, by its representative, and its counsel. As I had understood it, even assuming that there had been some reference—and I don't take it there was—in the testimony of Mr. Speer to Exhibit 233, and a request made by Mr. Speer for such a memorandum, the objection went precisely to that conversation, because the request was for legal advice.

Justice Stephens: Do you contend, Mr. Keber, that the fact that a client goes to his lawyer and tells him he would like to have some advice on a particular subject, that that much is privileged?

Mr. Keber: I take it that it is, because if the client couldn't go to his lawyer without having that fact disclosed, that he had sought legal advice and was asking for legal
advice about a specific matter, that might deprive the
6542 privilege of one of its best characteristics.

Justice Stephens: In other words, the privilege goes so far as to make secret the fact that a client consults his lawyer?

Mr. Keber: With respect to a particular matter. I take it it wouldn't be secret that he went into the lawyer's office, perhaps, but thereafter, when the question directs itself as to whether he consulted his lawyer about this or that matter, then you are getting into the question of what the legal advice concerned, and I take it from that point on the privilege starts to operate.

Justice Jackson: This is all explanatory of Mr. Adams' actions with respect to his cross-examination?

Mr. Keber: Possibly not as clearly as he would have put it, but as well as I could do.

Justice Stephens: You don't need to apologize for the way you present matters, Mr. Keber.

Well, so far as I personally am concerned, I don't want to belabor a small point or waste the time of the Court by being superconscientious, but I don't feel now, after having thought the matter over last night, that I ought to rule on the question of connection until I read the Speer testimony, and that will take me an hour, at any rate, to do it. I don't know how my colleagues feel about it.

What else did you have in mind this morning, Mr. Steffen?

6543 Mr. Steffen: I am ready to rest, practically.

Justice Stephens: You have no other statement to make?

Mr. Steffen: A very short statement.

Justice Stephens: Are the defendants ready to make a motion at this time, or do they wish to take a recess?

Mr. Steffen: I would like to make my statement before they make their motions.

Justice Stephens: You want to make your statement before a ruling on Exhibit 233?

Mr. Steffen: I would be very glad to.

May it please the Court, I wish to make a short statement in regard to the patent phases of the case. First, we are not going to make an offer concerning patent invalidity at this time. We have no reason to suppose that the Court has changed its views since the ruling upon that question last fall in connection with Paragraph 46(a). We, of course, do not concede, on the record, that any of the defendants' patents are valid.

Second, we do not consider that it is for the Government at this time to introduce any of the patents upon which the defendants may rely to justify their actions, if they can be justified; and of course until some showing of the patents

upon which the defendants rely is made, it would be premature on our part, as we see it, to offer any prior art to define the true scope of their patents. Our position
6544 in this respect has been stated over the past year, and appears particularly in our trial brief on pages 21 and 22.

Third, we, of course, do not concede that the patents, or any of them, which are mentioned in the complaint or referred to in the various license agreements, are of the type described in the General Electric case as "completely covering" the products made by the defendants.

Fourth, we do not concede that any gypsum board or lath manufactured by the defendants during the period of the alleged conspiracy embodies or comes within the claims of any patents the defendants may have.

Finally, I want to say that I make this with entire respect. I wish simply to make the record very clear that we make no concessions on those points, so that the defendants may not be misled in any way, and the failure on my part to mention something is not to be deemed a concession.

Subject to the ruling on Exhibit 233, we are prepared to rest.

Mr. Bromley: May it please the Court, I don't understand how counsel thinks he can comment on the scope of the patents if he hasn't introduced them in evidence, or how he can say that he has proved that they don't completely cover our product. If he hasn't put them in evidence, I should think the presumption that arises from the license agreements, which he did put in evidence, would be
6545 that the patents completely covered the product, and that they were used.

Of course, I think the Utzman patent and the Roos foam patents are in evidence, because they are exhibits to the complaint, and they are admitted—and the Haggerty starch patents, too—the five most important, fundamental product patents are in evidence, as I read the pleadings. Out of the 50 or 60 patents concerned, those annexed to the complaint are the fundamental product patents. They are admitted by the answers, as I understanding the pleadings. So they are before the Court. But I don't understand the position of Government counsel that he can argue about the scope of the patents if he doesn't think they are in the record.

Now assuming that the Government has rested, I should like to say this: As I recall the outset of this trial, the

Government gave us an assurance that they were going to produce evidence which would establish a conspiracy, prima facie, outside of the declarations of the co-conspirators. I think the Court felt—I know I did—that the mere fact that they put in license agreements did not establish any combination or conspiracy of any sort. That question was raised early in the trial, and after those license agreements were received in evidence, this assurance was given us that the Government would produce other evidence of understanding, arrangement or conspiracy among the defendants.

6546 I don't believe that promise has been performed. I haven't seen or heard any such evidence. Almost every document that has been offered has been received subject to the reservation that at some time it must be connected with some conspiracy by some proof outside of it.

So, therefore, I desire at this time, on behalf of the defendants United States Gypsum Company, Sewell L. Avery, and Oliver M. Knode, to move, and I do move, that all of the exhibits and testimony which have been received as to said defendants subject to the usual reservation be stricken from the record upon the grounds that no prima facie showing of any alleged conspiracy has been made, and that such exhibits and testimony have not been shown to have been in furtherance or in execution of any alleged conspiracy.

Said defendants further move to strike all of the exhibits and testimony which have been received as to said defendants subject to connection other than the usual reservation.

Justice Stephens: Are you making this motion to strike separate from your motion to dismiss?

Mr. Bromley: Yes, sir. It was my purpose to make two motions,—first, the motion to strike, and then the motion to dismiss.

Justice Stephens: Do you have something to say, Mr. Finck?

Mr. Finck: If the Court please, I would like to
6547 make a motion to strike on behalf of National Gypsum Company and Melvin H. Baker.

Justice Stephens: You may.

Mr. Finck: On the assumption that Mr. Bromley's motion only runs to his clients, I would like to make a similar motion.

The defendants National Gypsum Company and Melvin H. Baker move to strike from the record all of the exhibits and testimony which, in the course of the trial, were received as to such defendants subject to the usual reservation with respect to the declarations or admissions of alleged co-conspirators, on the ground that no prima facie showing that such defendants were parties to any alleged conspiracy has been made, and that such evidence has not been shown to have been in furtherance or in execution of any alleged conspiracy.

In addition to the foregoing, the said defendants further move to strike from the record all of the exhibits and testimony which have been received as to said defendants subject to connection, on the ground that no prima facie showing of the required connection has been made.

Now on behalf of the Ebsary Gypsum Company, Inc., and Frederick G. Ebsary, I would like to have the record show that a similar motion to strike all of the exhibits and testimony received as to such defendants subject to the usual reservation, has been made on the same
6548 grounds as stated in the motion made on behalf of National Gypsum Company and Melvin H. Baker; and in addition, said defendants further move to strike from the record all of the exhibits and testimony which have been received as to said defendants subject to connection, on the same ground as stated in the motion made on behalf of National Gypsum Company and Melvin H. Baker.

Mr. Keber: I have a similar motion to make on behalf of Certain-teed and Hartley.

The defendants Certain-teed Products Corporation and Henry J. Hartley move to strike from the record all exhibits and testimony which, in the course of the trial, were received as to such defendants subject to the usual reservation with respect to the declarations or admissions of alleged co-conspirators, on the ground that no prima facie showing that such defendants were parties to any such alleged conspiracy has been made, and that such evidence has not been shown to have been in furtherance of or in execution of any alleged conspiracy.

In addition to the foregoing, said defendants further move to strike from the record all of the exhibits and testimony which have been received as to said defendants subject to connection, on the ground that no prima facie showing of the required connection has been made.

6549 Mr. Johnston: If the Court please, on behalf of Samuel M. Gloyd, one of the defendants, I make a motion to strike, similar to the motion of National, as dictated into the record by Mr. Finck. I do this for the sake of brevity because I see no reason for repeating it all; and if the local rules require it, I will file a formal motion with the Clerk. I am not sure as to what the Rules require in that respect.

Justice Jackson: That motion is made with respect to Texas too?

Mr. Johnston: Texas is Gloyd. We have used the word "Texas" all the way through here for convenience.

Justice Jackson: I see.

Mr. Johnston: The record is clear that Mr. Gloyd was doing business under that trade name.

Mr. Oliver: May it please the Court, on behalf of The Celotex Corporation and Bror G. Dahlberg, I now move to strike the following exhibits and testimony upon the ground that no connection has been established whereby said exhibits, or said testimony, became or are binding upon these defendants or either of them:

1. All exhibits except Government Exhibits 13, 14, 22 and 23.

2. All testimony of all witnesses, other than Arthur R. Black (in so far as he testified regarding his present employment with The Celotex Corporation, transcript
6550 pages 2523 to 2525, inclusive), and C. F. Miller (in so far as his testimony relates to The Celotex Corporation, transcript pages 2614, 2615, and 2633 to 2638, inclusive).

In addition to the foregoing, said defendants further move to strike all evidence, verbal or written, which, in the course of the trial was received as to such defendants subject to the usual reservation with respect to the declarations or admissions of alleged co-conspirators, on the ground that no prima facie showing of any alleged conspiracy has been established, and that such evidence has not been shown to have been in furtherance or in execution of any alleged conspiracy.

Mr. O'Donnell: May the Court please, on behalf of the Defendant Newark Plaster Company and the individual Defendant Frederick Tomkins, we respectfully move this Court to strike all exhibits and testimony which, in the

course of the trial, were received as to such defendants subject to the usual reservation with respect to the declarations or admissions of alleged co-conspirators, on the ground that there has been no prima facie showing that such defendants were parties to any alleged conspiracy, or that any alleged conspiracy existed, and that such evidence has not been shown to have been in furtherance or in execution of any alleged conspiracy.

In addition to the foregoing, said defendants further move to strike from the record all of the evidence
6551 which has been received as to said defendants subject to connection, on the ground that there has been no prima facie showing of the required connection.

Justice Garrett: Of course I have only gotten these motions as they were stated, but your motion, Mr. Bromley, didn't go beyond striking the exhibits, did it?

Mr. Bromley: Yes sir, it did; it included the testimony.

Justice Garrett: It included a motion to strike the oral testimony as well?

Mr. Bromley: Yes, your Honor.

Justice Garrett: I didn't understand that at the time. Then, in substance, all motions are directed both to the exhibits and to the oral testimony?

Mr. Bromley: Yes, your Honor.

Justice Stephens: Do you wish to make an argument on your motion?

Mr. Bromley: No, your Honor. It was my plan, rather, to ask the Court, after I had made a motion to dismiss, what its pleasure was with respect to the program following these motions. It was my thought that if we could go away and prepare briefs on both sides, and come back here on or about the 15th of May, and argue these motions, having submitted briefs in advance and given them to the Court in advance, that probably that would be the plan that would enable us to make the best progress.

6552 Justice Jackson: Or both motions on one?

Mr. Bromley: On both motions.

Justice Jackson: But you haven't made your second motion yet.

Mr. Bromley: Not yet, your Honor.

Justice Garrett: Well, if your first motion is sustained—

Mr. Bromley (interposing): I don't need the second one. (Laughter)

Mr. Steffen: We won't hold Mr. Bromley to making any concession if he makes a second motion in conjunction with the first. (Laughter)

Mr. Bromley: I had thought that what counsel should do, if they could, would be to exchange briefs on Monday, say, the 8th of May, a week before the 15th, and then if they wanted to put in reply briefs, let them do that by the 15th or before the 15th of May, and then come in here on the 15th and proceed to argue both motions, because I take it that fundamentally the question is the same as to both motions.

Justice Jackson: That is the very thing I had in mind, and there is no necessity of briefing twice, as I see it.

Mr. Steffen: I think the fairest way of exchanging briefs is the way Mr. Bromley suggested, that they give us theirs and we give them ours on May 8th, and that will give us each an opportunity to see what the other's case is before we come to the argument on May 15th.

6553 Justice Stephens: It is very important to the Court, if you are going to exchange initial briefs, that there be reply briefs also, because sometimes, when briefs are presented at the same time by way of exchange, you don't get a real "crossing of swords" by counsel, so that the Court finds some assertions made by one side that aren't touched upon by the other. So I think it is quite important that if the briefs are to be exchanged in advance of the argument, there should also be reply briefs submitted so that the Court can be sure that it has the views of each of the parties on all of the contentions of the opposite party.

Mr. Bromley: Of course the fair thing to do in this situation would be for the Government first to state just what it is it thinks it has shown by way of a prima facie case.

I say that because I am frank to admit that I just don't see what they have done in that respect, and when I write my brief I have got to set up all possible straw men and knock them down.

Now there ought not to be any secret about it. If they think they have introduced any evidence of any combination, outside of the declarations, it seems to me that they ought to say so.

Mr. Steffen: We do.

Mr. Bromley: And tell us what it is, and not keep it a secret, because there is no reason why it should be

6554 a secret from us. I should find great difficulty in setting up a hypothesis as to what they might contend, and I would like to know—speaking about fairness—

in advance just what it is they think they have proved by way of combination.

I can understand the Hitchman case, where you have a union in meeting assembled, and they pass resolutions and reach agreements that they will go out and unionize the men. There there was proof of a definite understanding or agreement, and after it was made in the convention, and their agents and organizers went out into the field, the declarations which they made, which are relevant to that understanding which has been proved, are binding on everybody.

Now in that case the Government took a perfectly open position as to what understanding they had proved, before they attempted to bind the defendants with the declarations.

I would like to have the Government tell me just what it is that these defendants agreed among themselves to do, because I don't believe that there is any proof that they ever agreed among themselves to do anything, and I don't believe they ever had any common purpose, except, maybe, after they got to be licensees I guess they had the common but not joint purpose of observing their contracts. And I think that is the only common purpose that there is any proof about at all, and I don't think that common purpose constitutes an arrangement or agreement or understanding or conspiracy—and I am mindful of the
6555 fact that the Government need only prove a lawful arrangement, I know that, sure.

Justice Stephens: Prove what?

Mr. Bromley: That they need only establish, for their prima facie case, a lawful arrangement. Then they can come along with declarations and give the illegal color or character if they want to.

What I would like to know is, sometime before I write my brief, if I can, just what lawful arrangements the Government thinks it has proved, and what that evidence is. So I would like to have their brief first on the motion to strike.

Justice Stephens: It would be very helpful to the Court if it knew just what the Government's contentions were, in respect of that.

Mr. Steffen: Your Honor, I would—

Justice Jackson (interposing): I suppose the Government feels that it has proved the allegations of its complaint?

Mr. Steffen: That is what we thought, your Honor. We also supplied you with a very thoroughgoing trial brief, we thought.

Justice Stephens: Yes, which I have read very carefully, and also all the cases cited therein.

Mr. Steffen: That laid out, I think, the general thesis of our case. Of course it is preposterous, shall I say, for a person making a motion to strike, to ask the other
6556 party to give him his evidence or his arguments in advance. The usual way is for the moving party to give the other party a brief; and then he may reply. In this case I went along, very generously I thought, with Mr. Bromley and said that we would exchange briefs on May 8th—which is a less fair way from the Government's standpoint.

I want to leave one thought with you, if I may, on this matter, in answer to Mr. Bromley's point. I think if he will read the Masonite case very carefully again he will get a pretty good idea of what has been established in the present case.

I also want to refer now to what Mr. Dallstream said, at the time Mr. Dahlberg was on the stand. You will remember that he made a statement in connection with the Masonite case. In the Masonite case you had a series of agreements and they were all, on their face, legal, as he said—they were agency agreements. The question then was, where was the conspiracy. And Mr. Dallstream, in very few words, told us where the conspiracy was. He said, on page 6350 of the transcript: ". . . and the case in the Supreme Court proceeded on the ground that it was a true agency, and that the violation occurred only because it blanketed and enveloped the whole industry with the contract".

That is what we have here.

Justice Stephens: Do you rely upon the Inter-
6557 state Circuit case also?

Mr. Steffen: Oh yes, I don't want to be limited as to what we rely upon—

Justice Stephens (interposing): I am not attempting to limit you. I only want to find out, as far as you are willing to state, what cases you rely on. I had assumed that you would be contending under the Interstate Circuit case as well as the Masonite case.

Mr. Steffen: I think Mr. Dallstream's statement shows the relationship between the conspiracy and these agreements. The agreements, like the agency agreements, may,

when looked at singly, be innocent. The vice lay when the industry got together to blanket the industry under those agreements. Mr. Dallstream put it in very few, very terse and very nice words.

Mr. Bromley: I don't see why there should be any confusion about either one of those cases. I have got the Masonite case before me and I think the second headnote states the heart of the decision and explains why it is not applicable to our case. It says:

"Acceptance by competitors without previous agreement of an invitation to participate in a plan, the necessary consequence of which, if carried out, will be restraint of interstate commerce, renders them liable as conspirators under the Sherman Act."

6558 Now here the defendants accepted an invitation to a plan, the necessary consequence of which was a lawful consequence. We had a patent and we had the right to grant licenses.

In the Masonite case "the necessary consequence of which" was an illegal restraint of trade because it was not protected by any patent.

In the Interstate Circuit case all you had was a group of distributors of motion pictures, whom it was proved circumstantially agreed with one another that they would only license their motion pictures to exhibitors under one form of contract which contained provisions about the admission price and so forth. The defendants restrained themselves unlawfully because they limited their freedom of action, and each agreed with the other that they would only use this one form of contract, that they would only do business on these terms. That was not protected by any patent, it was a restraint of each of them, and an unlawful restraint.

How you can draw any analogy between those two cases and this situation, where we have a presumptively valid patent and we extend an invitation to all those who want to operate under our patent to sign a license, and the licenses are lawful, and they are carried out lawfully, how you can draw any analogy between that and these other two cases, I fail to see.

The Government recognizes that because for
6559 months they have been talking about subterfuge.

They try to get away from the conclusion that I make, that this plan is not like the plan in the Masonite case because this plan is lawful. They try to make it unlawful by

saying, "Oh, well, but it isn't what it appears to be, it is a fake, it is a fraud, and it was not entered into for the purpose of using the patents or lawfully fixing the prices."

Well, that is an admission that they haven't proved anything by just proving the patent agreements. They have got to go farther and show that it was a smoke-screen, and that is what they have talked for weeks and weeks and weeks, and all they have succeeded in proving is that it was a bona fide plan, carried out to the last detail, royalties were actually paid, the patents were used, and the thing was observed meticulously, as a lawful contract scheme, under legal guidance, and there wasn't any fake or fraud about it in the slightest.

Justice Stephens: I would like, just by way of preliminary discussion, to hear you a little further as to this, Mr. Bromley, and then I will make a comment as to what I think the order of business ought to be, subject to the views of my colleagues, of course.

I read the trial briefs, of course, of both the defendants and the Government, as well as the cases cited in them. In fact, I spent all the last recess doing that, with more thoroughness than I had had the opportunity to do before.

6560 I had supposed that the Government might contend that under the Interstate Circuit case—since there were copyrights there can be price-fixing under copyrights—that there was some sort of an analogy between that case and this case.

As I remember the facts in the Interstate Circuit case, the exhibitors entered into an arrangement with each other and with the distributors, whereby the distributors, under a rigid contract, were forbidden to sell to exhibitors unless the "second-string" theaters would show their pictures at a minimum price, and would eliminate double features.

Apparently the Court held that that was illegal despite the fact that there was a copyright which entitled the owner to fix prices and terms and conditions of use of the films, because there was concert of action among the exhibitors in bringing about these rigid contracts.

I had supposed that the Government would be contending that there was some evidence that the communications between the various licensees and Mr. Avery, antecedent to the meetings on or about the 22nd or the 23rd of May, 1929, were to be considered as analogical to these arrangements between the exhibitors in arranging the contract with the distributors. What do you think about that?

Mr. Bromley: Well, I think this about that. If you had a situation where there was one distributor who owned
6561 copyrighted pictures, I take it all would agree that he could say to all exhibitors, "Now you can have my copyrighted pictures and show them, but you must do it on condition that you will get the following amount of protection, and the 'subsequent-run' fellows can't have them for six months, and then can only have them if they charge fifty cents."

That is perfectly lawful if there is one distributor who owns his copyrighted product and he enters into those arrangements with all distributors.

The vice of the Interstate Circuit case was that you had not only one licensor, but you had all licensors, all distributors, agreeing with one another that they would each do business with their customers on precisely the same terms.

All we have in this case is USG, one licensor, who makes substantially similar arrangements with its licensees. If you had USG, the owner of some patents, and somebody else, the owner of some patents, and they both said, "Now we will license the industry on the same terms", then you would have the Interstate Circuit case. But you haven't got that.

Therefore, I see no analogy between the two cases and I think the copyright in the Interstate Circuit case would protect the individual distributor in his license arrangements with all of his exhibitor customers. But of course you can't get the owners of a lot of copyrights on different products together and say, "We will all follow the
6562 scheme in our dealings with our customers."

That is the distinction which, to my mind, takes the Interstate Circuit case right out of any analogy to this situation because here we have only one licensor who tells his customers, and nobody else, his licensees, that is, the basis on which he will do business.

Justice Stephens: Well, of course the object of these arguments is to help the Court get to a considered and sound conclusion on the facts and the law of the case.

It would be helpful to the Court, I think, if the Government's contentions were a little more concretely in the mind of the Court and of adverse counsel, than they are at the present time and than they are as presented by the Government's trial brief. At the same time Mr. Steffen is tech-

nically within his rights in insisting that you present your brief first, and we can't require the Government, I suppose, to present anything in advance if it doesn't wish to aid the situation by doing it, or thinks that it wouldn't aid the situation any by doing it.

I think we had better take a recess until two o'clock and let the Judges consider what their views are with respect to the time when we should hear argument on this, and the time when briefs should be presented, and to rule on Exhibit 233 so that we will get the record absolutely clear.

Mr. Bromley: Shouldn't I make my motion to dis-
6563 miss before you do that?

Justice Stephens: Yes, you may do that.

Mr. Steffen: I would simply like to state that we regard it as very odd that we should have to go forward at all at this time, and I will say, from the standpoint of the Government that we are just as much at sea as to what the defendants contend is their defense—

Justice Jackson (interposing): Well, you will all be enlightened, I suppose, when you get each other's briefs.

Mr. Steffen: That is right, your Honor, this is all premature. However, I am glad to give the Court any assistance that it wishes.

Justice Stephens: I am sure you are, Mr. Steffen.

All right, Mr. Bromley.

Mr. Bromley: May it please the Court, the defendants United States Gypsum Company, Sewall L. Avery and Oliver M. Knode, move, under Rule 41(b) to dismiss the complaint herein with prejudice on the ground that upon the facts and the law the plaintiff has shown no right to relief. Specifically the grounds of the motions are:

1. That the Government has failed to introduce evidence sufficient to establish that said defendants ever became parties to contracts in restraint of trade and commerce in gypsum board, plaster and miscellaneous gypsum products among the several States in violation of Section
6564 1 of the Sherman Act, as charged in and by the complaint, as amended.

2. That the Government has failed to introduce evidence sufficient to establish that said defendants ever became parties to or engaged in a combination and conspiracy in restraint of trade and commerce in said gypsum products among the several States in violation of Section 1 of the Sherman Act, as charged in and by the complaint, as amended.

3. That the Government has failed to introduce evidence sufficient to establish that said defendants ever monopolized trade and commerce in said gypsum products among the several States in violation of Section 2 of the Sherman Act, as charged in and by the complaint, as amended.

4. That the Government has failed to introduce evidence sufficient to establish that said defendants ever have attempted to monopolize trade and commerce in said gypsum products among the several States in violation of Section 2 of the Sherman Act, as charged in and by the complaint, as amended.

5. That the Government has failed to introduce evidence sufficient to establish that said defendants ever became parties to or engaged in a combination and conspiracy to monopolize trade and commerce in said gypsum products among the several States in violation of Section 2 of the Sherman Act, as charged in and by the complaint, as amended.

6. That the Government has failed to introduce evidence sufficient to establish that said defendants ever became parties to contracts in restraint of trade and commerce in said gypsum products between the States and the District of Columbia, in violation of Section 3 of the Sherman Act, as charged in and by the complaint, as amended.

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7. That the Government has failed to introduce evidence sufficient to establish that said defendants ever became parties to or engaged in a combination and conspiracy in restraint of trade and commerce in said gypsum products between the States and the District of Columbia, in violation of Section 3 of the Sherman Act, as charged in and by the complaint, as amended.

Justice Stephens: Are there motions by other defendants?

Mr. Finck: If the Court please—

Justice Stephens (interposing): I might state—I am not sure that the Rules require it but I think it would be helpful if, after these motions have been written up in the transcript, defendants' counsel could take time to have them written up formally and filed in the case with the Clerk.

I say that out of my experience in respect of the motions for summary judgment which I had considerable difficulty with, you will remember, in getting at the real terms of the

motions for a directed verdict. It is a great convenience to the Court if, in addition to what is dictated into the transcript, motions both to strike and to dismiss can be formally filed with the Clerk.

6566 Proceed, Mr. Finck.

Mr. Finck: The Defendants National Gypsum Company and M. H. Baker; and Ebsary Gypsum Company, Inc. and Frederick G. Ebsary, move under Rule 41(b) to dismiss the complaint upon the merits on the ground that upon the facts and the law the Plaintiff has shown no right to relief; and further move to dismiss the complanit on the specific grounds as stated in the motion to dismiss the complaint herein, made by the United States Gypsum Company.

Mr. Steffen: I understand, when you suggest that written copies of these motions be filed with the Clerk, that Government counsel will also get the usual number?

Justice Stephens: That would be conventional, of course.

Mr. Steffen: We would like to have three copies of each motion, if possible.

Justice Stephens: I am sure defendants' counsel will accommodate you.

Mr. Johnston: If the Court please, on behalf of Samuel M. Gloyd, that defendant will adopt the motion of the United States Gypsum Company—and we will file a formal motion. I thought that should be done, and that is the reason I raised the question.

Mr. Keber: The Defendants Certain-teed Products Corporation and Henry J. Hartley move, under Rule 41(b)

6567 to dismiss the complaint herein upon the merits, on the ground that upon the facts and the law, Plaintiff has shown no right to relief.

Specifically, the grounds of the motion are those stated by Mr. Bromley on behalf of the United States Gypsum Company and the other individual defendants whom he represents, which grounds we adopt in toto.

I don't know whether I am out of step in saying this, but I don't know whether it is perfectly clear, as to the defendants other than USG, concerning the procedure to be adopted with respect to the exchange of briefs here. For instance, our position may be somewhat different from that of USG. I don't know whether the Government anticipates writing one brief which will discuss not only USG's problems, but ours as well.

Justice Stephens: I should think that when defendants present their briefs, each defendant would have a right to present a separate brief if it wishes to do so. Then the Government would have to reply to each of the contentions made in the brief of each defendant. If the defendants wish, of course, to combine with Mr. Bromley in the submission of a brief, or to do both, to adopt in the large the brief submitted by Mr. Bromley and file supplemental briefs on each item that each defendant separately thinks it ought to urge, that can be done. But they ought all to be presented at the same time to the Government so the Government can have the benefit of knowing what the contentions of all
6568 defendants are, and so that the Court can see the exchange of views.

However, we can settle all that before we adjourn finally today.

Another desirable thing that I might mention, just while we are speaking about it informally, is that I think it is very desirable that the reply briefs should be presented in time for the judges to be able to read them before the argument. Perhaps it would be better to postpone the argument a little bit longer, if necessary, in order to give the Court the advantage of doing that. I find it, myself, very helpful in understanding a lawyer's argument if I have his brief and have read it in advance of the argument.

Mr. Johnston: If the Court please, in that connection May 15th will come around very soon, and if these briefs are exchanged by May 8th that wouldn't give much time for preparation of reply briefs if the argument is to be on the 15th of May.

Now I have a selfish motive in making this suggestion also, that a little longer time would suit my purpose very well, because I have another case starting on the 1st of May and I might be able to dispose of one phase of it if I had a few more days' time. I wonder if it would make any difference to the parties or to the Court if the date of argument on these motions might be set off a little farther than May 15th.

Justice Stephens: We will consider that before
6569 we adjourn today, and have a definite understanding. Are there other motions by other defendants?

Mr. Bromley: What is Mr. Johnston's suggestion, May 16th?

Mr. Johnston: No, I thought around the first of June, possibly. A week or two additional time would mean a lot

to me, if the Court please. Of course I am in this case and I will adjust my other appointments to this, but I just have one of those emergency matters that come up now and then that I must get into on the first of May.

Mr. Oliver: May it please the Court, the Defend... The Celotex Corporation and Bror G. Dahlberg now move, under Rule 41(b) for a dismissal of the complaint as to these defendants on the ground that upon the facts and the law the Plaintiff has shown no right to relief; and on the further specific grounds stated by Mr. Bromley in his motion, which grounds are adopted by these defendants.

Mr. O'Donnell: May the Court please, on behalf of the Defendant Newark Plaster Company, and the individual Defendant Frederick Tomkins, I now move, under Rule 41(b), for a dismissal of the complaint as to these defendants on the ground that upon the law and the facts, the Plaintiff has shown no right to relief; and I further move for judgment for these defendants. For the purposes of specification, I adopt the grounds stated by Mr. Bromley on behalf of the United States Gypsum Company.

6570 Justice Stephens: Are there any other motions by any defendants?

Justice Garrett: I suppose, of course, that whatever action the Court may finally take on Exhibit 233 would not affect any of the motions that have been made.

Mr. Bromley: No sir.

Justice Stephens: It may be shown, when we make a ruling on Exhibit 233 one way or the other, that that ruling may be considered as antecedent to these motions. Nobody would object to that, I assume.

We will take a recess at this time, gentlemen, until 2:30 this afternoon.

(Whereupon, at 11:15 o'clock, a. m., a recess was taken until 2:30 o'clock, p. m., of the same day.)

6571 AFTERNOON SESSION

(The trial was resumed at 2:30 o'clock, p. m., pursuant to recess.)

Justice Stephens: We have considered during the recess this Exhibit 233, and all of us have reconsidered and reread, since last night and during the recess, Mr. Speer's testimony, and we have reached the conclusion that, even

treating Mr. Speer's testimony as none of it privileged, and considering all of his testimony, it does not constitute a connection as far as Exhibit 233 is concerned, and make Exhibit 233 the act of Certain-teed.

Therefore, to protect your record, Mr. Steffen, we reject Exhibit 233.

Now with respect to the time for the filing of briefs and argument. So far as the convenience of the Judges is concerned it is of little importance whether the argument be held on the 15th of May, which is a Monday, or the following Monday, May 22nd, or as Mr. Johnston suggests, along about the first of June.

Of course we think the main consideration should be—when can the briefs be presented and the argument held in such manner and form as will be most helpful to the Court. We don't want you pressed to the point, on either side, where you can't get out adequate briefs and adequate replies and make adequate oral arguments, because we
6572 want the briefs carefully annotated to the record, so far as the facts are concerned, and we want counsel on each side to cross swords with each other on the meaning of the evidence and the meaning of the authorities, and we would like to have counsel go into the authorities, wherever it seems necessary to do so, to fully understand what the rulings—of the Supreme Court particularly—mean beyond the face of the opinions.

That is to say, we would like to know what the record is in some of these cases. I should think it would be very valuable to know what the facts in the record are in the General Electric case, for example, to compare the licensing system there with the system here. It might be desirable to know what the record facts are in the Interstate Circuit case, beyond what appears on the face of the opinion.

Now we would like to hear from counsel on both sides as to when they think it would be best to have the briefs presented, and best to have the argument. We should think that the main briefs should be exchanged so that each side will know what the other is arguing, and then file reply briefs. It might be that it would be sufficient to have the reply briefs presented before the argument, then have the oral argument, and then have additional, or reply briefs, presented, if necessary, to be sure that there is a complete meeting of issues on both sides. Possibly it would be sufficient to have the main briefs presented before the
6573 argument and then one set of reply briefs presented

after the oral argument and after consideration of the main briefs.

We will be glad to have suggestions and we will accommodate ourselves largely to the needs of counsel so far as time to do the job adequately is concerned.

Mr. Steffen: May it please the Court, on behalf of the Government we might say that the arrangement suggested by Mr. Bromley, of the exchanging of main briefs on May 8th and final briefs and argument delivered on May 15th, is satisfactory. I think we can get together an adequate argument by that time.

However, we would be willing to concede a few days, particularly after the 15th, because there wouldn't be very much time between May 8th and May 15th to get any typing done.

Justice Stephens: To get in a reply brief?

Mr. Steffen: That is right, and get the document over to the Court.

I want to say on the other side what I have said for a year or more, that we are anxious to get this case concluded, but of course we don't wish to have it poorly considered. If possible, I would rather not have it postponed any longer than May 22nd.

Justice Stephens: We don't want to postpone it, either. At the same time, the case is so important, and has taken so much time already, that we ought not to hasten it
6574 in this most critical aspect of the case, and if an opinion has to be prepared, the problem of preparing an opinion on such a complicated matter is a very serious problem.

It would seem to us, if the motions should be denied, that it would be pretty difficult to get the case finished this term because there must be some surcease for all of us during the summer months.

If the motions are granted, how long it would take to prepare an opinion I wouldn't undertake to say. What have you to suggest, Mr. Bromley?

Mr. Bromley: May it please the Court, no one on my side agrees with my tentative schedule as I suggested this morning, and they all make the point that I didn't allow sufficient time between the receipt of the main briefs and the filing of replies. I think they are right.

Therefore, I suggest this alternative arrangement: To exchange main briefs on Monday, May 8th; to exchange

reply briefs on Thursday, May 18th; and to argue the motions on Monday, May 22nd.

Justice Stephens: That is agreeable to the Court, and if, after the oral argument, we feel or you feel that we need any supplemental replies, they may be filed then.

Mr. Bromley: Yes sir. Under this arrangement it would give the Court two weeks to read the main briefs and a week to read the reply briefs.

6575 Justice Stephens: That is fine. Do you have in mind having these briefs printed or typewritten? The problem of printing is a problem of time, of course.

Mr. Steffen: We nearly always have ours typed, your Honor, for lack of money?

Justice Stephens: Is the Government poor, Mr. Steffen?

Mr. Steffen: So we are told. (Laughter.)

Justice Stephens: Well, I realize, sometimes, that appropriations are limited.

Mr. Bromley: We expect to print ours, if there is enough money left.

Justice Stephens: Of course if it is possible to have them printed, from the standpoint of the Court they are much easier to deal with, but we don't want to make any flat requirement on that. I don't think the rules require it.

Mr. Johnston: If the Government is poor, we might print their briefs for them. (Laughter.)

Justice Jackson: Mark well the word "might". (Laughter.)

Mr. Johnston: I will do that if they will let me write it. (Laughter.)

Justice Stephens: Well, the last suggestion made by Mr. Bromley as to time is approved by the Judges, and that will be the order. Is there anything else to come up at this time?

Mr. Bromley: Nothing, I think.

6576 Justice Stephens: We thank you on both sides, gentlemen, Government counsel and defendants' counsel, for your pains and help to the Court thus far in the case, and we shall welcome you back here again on the 22nd of May.

Announce the recess.

(Whereupon, at 2:45 o'clock, p. m., the trial was recessed until Monday, May 22, 1944, at 10:00 o'clock, a. m.)

6577 Justice Stephens: I might say I have written down two questions to ask you at the close of the agreement. I do not want to interrupt you during the argument unless necessary.

I want to ask you what you mean by the word "stabilization". It has been used a great deal and it seemed to me to be used not merely in terms of prices but of something beyond prices; and I wonder what you mean by the
6578 term "blanketing"; when those two terms are used in the contex of the Sherman Act?

Passing back to the question we have just been discussing, I fully understand that there is an issue between the parties under the General Electric case which I am hoping you will discuss—as to whether or not, under the General Electric case, a group of licensees can be lawfully formed, as distinguished from one licensee as in that case. Does that help clarify the question that I asked you?

Mr. Steffen: I think that clearly presents the question and if I can rephrase the question, it is, in Mr. Bromley's words, whether it is perfectly lawful, as he would say, for competitors to sit down together to take out a license from one of their number holding a patent, that the licenses should be common in form, that there should be price fixing and that they should even discuss the matter of price fixing, although he does not go so far as to say there should be any discussion as to what the prices should be but they should know at the time they enter into it that there would be a common agreement, that there would be price fixing and that presumably they would operate under it, but no agreement as to what the prices should be.

As I understand it, Mr. Bromley—and I want to be perfectly fair in it—as I understand it Mr. Bromley takes that position, that it is lawful and I think most of his arguments are predicated on the assumption that it
6579 is perfectly lawful under the General Electric case for a group of erstwhile competitors to get together under a common license and to fix their prices. That is a clear-cut issue and it raises two general questions. One is as to the charge in the complaint, whether we charge that that is illegal, and I think perhaps I had better refer to that somewhat in view of your Honor's question concerning "blanketing."

Our notion of "blanketing" is that it is a loose word to describe the bringing together of the whole industry under

a common license agreement or, in other words, it is very similar to conspiracy. It is an association, concert of people under common agreements. That is, blanketing them together. As applied to the Masonite case, there was a series of competing companies who were making one type or another of hard board. They had competing patents, just as in this case the Beaver Company had some thirty-odd patents to begin with and they were in competition and those patents were turned over to USG, became part of the first Beaver agreement. Then, when they decided among them, Masonite, Celotex and Certain-teed and the other parties to the Masonite case, that they would take out common del credere agency agreements which provided for price fixing, I think it can be shown in the opinion that the court thought that was a very dangerous device, that it would have the effect of knitting together an entire industry, thereby eliminating competition, and that
6580 was the vice, as I see it, that the court struck down in the Masonite case.

We contend that the exact vice exists in this case although the device which they used in this case to put it over is different. That is, in the Masonite case, they used the del credere agency agreement and accomplished elimination of competition. Here they took out patent license agreements and accomplished, by virtue of the price fixing clause, exactly the same result and the Sherman Act is directed at eliminating that result. The fact that it was handled by one device or another seems to be a matter of no importance. That is, if you look through the many cases from the time the Sherman Act was passed up to the present time, you will find that the parties have been extremely ingenious in finding devices whereby they could accomplish an elimination of competition and a fixing of prices or stabilizing of conditions.

We contend and our position here is that that is exactly what the defendants here have done, using a patent license agreement with price fixing they have been able to completely eliminate price competition throughout the gypsum industry, particularly with regard to board.

Of course we contend also that it has operated to stabilize or, in other words, to influence the price of plaster and that they did that as part of the intention of the combination.

6581 Justice Garrett: Pardon me just a moment, Mr. Steffen. I want to understand you clearly. Did I

understand you to say that the Beaver Company owned a lot of patents which were transferred to USG?

Mr. Steffen: That is right.

Justice Garrett: Transferred in connection with the settlement of the litigation?

Mr. Steffen: That is right. The Beaver Company was the largest company other than USG at the time. They were the biggest companies in the field and when Mr. Blagden and Mr. Avery made their arrangement in 1926, one of the provisions of the arrangement was that Beaver would turn over around thirty or thirty-two patents to the United States Gypsum Company and then they were incorporated in the appendix to the agreement and they became the patents which were in the appendix to the May agreements and likewise the November agreements which were executed throughout the industry.

I will have some further comment on that but your Honor will appreciate that what was accomplished there was, in a measure, a pooling of patents and a licensing back to Beaver with price fixing of the very patents which they had originally owned. We will go into that when I take up the Blagden testimony.

Justice Jackson: Was not the Beaver Company over a barrel there in an infringement suit?

6582 Mr. Steffen: Well, I do not think I have to answer that, your Honor, whether it was or not. That is the contention.

Justice Jackson: They paid a lot of money.

Mr. Steffen: They paid a lot of money and it makes it look as though they were over a barrel. Let's make one other point. They can be over a barrel and they may have all sorts of business reasons and Mr. Avery may be just as adamant as he wants to be saying, "You have got to take price fixing", but when the result is over, they have agreed to a contract whereby they pool their patents and there is price fixing thereafter between them. That is concert of action to accomplish an illegal purpose. That, as we say, is a violation of the Sherman Act.

I am going to notice very carefully Mr. Bromley's defense, which is two-fold; one, that the General Electric case is a protection and, two, I take it, that the Rubber Tire Wheel Company case is a protection to what they have done.

Mr. Bromley: Wouldn't it be fair to point out that there is a statement in the record about this matter that completely contradicts his present argument?

On page 1572, your Honor specifically asked Mr. Knuff this question:

"The Court understood Mr. Bromley to object to your inquiry into the ownership of these patents upon the ground that there is no charge in the complaint that the
6583 transfer of them by Beaver to USG was illegal.

"Mr. Knuff: We do not so contend."

I thought that took that out of the case a long time ago.

Mr. Steffen: What was the transcript page?

Mr. Bromley: 1572, beginning in line 2 and ending in line 7.

Mr. Steffen: The answer to that is complete, your Honor. When Mr. Knuff said that he said that quite properly.

What I am saying to you now is that the fact that Beaver did transfer patents to USG is one of the facts of this case. We do not charge that as being illegal, just as Mr. Knuff said, but in determining whether there is illegality in the price fixing matter you are to consider all the facts and that is definitely one set of facts which is to be considered and which is very operative in determining the type of combination and conspiracy that we have here. I, therefore, was quite well aware of the statement, transcript 1572, and quite willing to say we do not charge that as one ground of illegality in and of itself. It is simply one of the facts in the case and is to be weighed in determining whether the charges we do make, that is, of price fixing, are charges which can be sustained as illegal price fixing.

6584 Justice Stephens: Are you passing on to a new subject beyond the General Electric case now?

Mr. Steffen: I am going to spend quite a little time on that General Electric case, your Honor.

Justice Stephens: I had some questions to ask you about the General Electric case but I do not want to interrupt the course of your argument. I thought you were passing from it.

Mr. Steffen: I would rather that you would defer those questions but I would be delighted to have the Court ask me any questions they want at any time.

I want to clear the record, if there is any doubt in anybody's mind, as to whether we, under the complaint, charged that a combination to blanket the industry under common price fixing agreements in the form of license agreements

is illegal. If there is any doubt, I say I think there is doubt because Mr. Bromley has once said, I believe, that the only possible illegality in such a combination would be if they extended the monopoly to control the sales or if they extended the monopoly to cover or control plaster sales. What he suggests thereby is that there is nothing illegal in the heart of the thing, which is a combination to fix prices on the patented goods. That is the matter which we charge in the complaint is illegal and which I expect to establish on the law is illegal and which I will then show is established in the evidence.

6585 Justice Stephens: Before you leave this particular point, I would like to ask you a little further about your position with respect to these Beaver license transfers. Those transfers of patents from Beaver to USG took place at the time of the settlement, did they not?

Mr. Steffen: That is right.

Justice Stephens: And at the same time that Beaver took a license back from USG?

Mr. Steffen: That is right.

Justice Stephens: I say this, in entire good part, but it seems to me duplicitous to argue that you can, on the one hand, say, as Mr. Knuff said, you charge nothing illegal about those transfers of patents to Beaver when they were a part of the very kind of a transaction which you say is now illegal, to-wit, transferring patents to USG and taking licenses back constituting, in its nature, a blanket or pool. How can you divide the mind of the Court or divide the facts in that way?

Mr. Steffen: I do not govern the Court's mind, your Honor. We could not have presented the facts in this case without presenting those facts. We do not charge that as being illegal, as a charge. I pointed out the charges are price fixing and eliminating jobbers. Those are the things we have been discussing.

6586 Justice Stephens: But if it is illegal for one company, like Beaver, to transfer its own patents to USG and take a license back, then it was illegal, wasn't it, to transfer those patents from Beaver to USG?

Mr. Steffen: Whether illegal or not, it is not charged as illegality. It is simply one of the facts to be weighed with all the other facts in determining whether this was an illegal conspiracy to fix prices, which we do charge. The same thing happened in connection with the Haggerty patent, your Honor, and that is all in evidence. The Haggerty patent was kicking around the industry, so to

speak, from 1924 to 1929. The only people using it were Universal and National. National used it for a period and was sued for infringement. National and Universal struck a bargain after a bit whereby National was permitted to continue to use the patent. This was following the action in Buffalo at which the court issued a restraining order, as we think, not because the patent was infringed necessarily but because Haggerty and the National people, being assignors to Universal of the patent, were estopped from setting up any question of validity and the court said on that showing that Haggerty and Universal would be enjoined or a preliminary restraining order would issue.

Following that, according to Mr. Finck in his opening statement, National made an arrangement to use that patent under an indemnity arrangement. In the summer of 1929, that had ripened, according to Mr. Finck, I believe,
6587 substantially into a prospective license from Universal. Then it was decided, and the evidence is clear on this, that Universal should sell the patent to USG. Mr. Bromley told you in his argument that that was something arranged entirely independently by USG; that USG and Universal arranged the transfer as a separate and independent transaction. Of course, it is obvious that it was not arranged as an independent transaction. It was arranged as part of this whole scheme. The C. O. Brown memorandum, which is in evidence, discloses that the matter was talked over by the different members of the industry and it was decided or it was discussed whether they should take licenses from Universal or whether USG should buy the patent. It may be when they came to take a license under the patent they sat down independently and did it but it cannot be treated as an isolated, unrelated transaction.

What I am getting at is this: That thereafter, Universal sold the patent to USG and took a license back, in effect, from USG so that again you have a situation of patents which are being transferred within the industry and which, in that case, were transferred to the dominant power in the industry and made the basis for their price fixing. I mean, we do not charge that the transfer was illegal but we do charge that the price fixing based on that transfer was illegal and I do not think there is any element of duplicity in our position.

6588 Justice Stephens: I repeat I used the word "duplicity" in good part. I have difficulty in seeing

the same fact in two different lights at the same time—in view of Mr. Knuff's statement. To put it in broader terms and in what are perhaps more important terms, I had got the impression, as a result of Mr. Knuff's statement concerning Beaver and as a result of the presentation of the case as a whole, this was not charged as a patent pooling case—

Mr. Steffen: That is right.

Justice Stephens: (Continuing) —or as a cross-licensing case but only as a case which was illegal because, regardless of where USG got the patents or from whom it got them, it could not use them in the way that it has, and I thought, therefore, that when Mr. Knuff stated you did not charge illegality in the transfer of Beaver's patents to USG at the same time Beaver got a license back from USG he was, in effect, conceding this was not a cross-licensing or pooling of patents case.

Mr. Steffen: We will say that the charge here is the charge of price fixing but, in order to determine it, you have to look at all the facts and one of the facts was that these patents were transferred back and forth.

I want to spell out very clearly our charges in order that it can be seen just where we charge that a conspiracy to blanket the industry under common license agree-
6589 ments in order to organize the industry and stabilize prices is illegal. I will secondly then want to take up the question of whether or not it is illegal.

In paragraph 44, as I have said to the Court many times, we charge a conspiracy to restrain trade and that is the charge under which we are proceeding here in this argument. In paragraph 45, we make the further statement that:

"Said companies have entered into, have carried out and are carrying out said combination for the purpose and with the effect of restraining, dominating and controlling the manufacture and distribution of said gypsum products in the Eastern area by concertedly raising and fixing at arbitrary and non-competitive levels the prices of gypsum board manufactured and sold by said companies in the Eastern area."

I will stop there. That, therefore, constitutes the charge that the defendants have conspired to restrain trade; that they have done so with the purpose and effect of estab-

lishing arbitrary and non-competitive levels for so-called patented gypsum board.

In paragraph 46, we say:

"Said combination was entered into and has been and is being carried out by the defendant companies, in part, under the guise of numerous license agreements purporting to relate to the use of certain patents owned by the defendant, USG, in the manufacture of gypsum board."

6590 In other words, as I understand that and the rest of the paragraph bears it out, we charge that they have conspired to restrain trade. We charge that it is a price fixing type of restraint rather than, as your Honor has pointed out, a patent-pooling type.

It is a price-fixing type of restraint which is the principal charge here and we charge it has been done under the guise of using patent license agreements.

Those patent license agreements are the ones we introduced on the first day. They are patent license agreements which contain a price fixing clause and that, therefore, we, I think, charge clearly and the heart of this case has to do with the price fixing on so-called patented board pursuant to USG bulletins. That is right at the heart of the case.

If your Honor has any question on that I would be glad to talk about it further but it seems to me so clear that that is one of the charges in this case that it can hardly be argued further.

Of course, in addition, we say and they are stated there in paragraph 45, b, c, d and e, that they did a lot of other things besides fixing prices on their so-called patented board. They, as we contend, in their conspiracy sought to control plaster prices. We contend further that the conspiracy resulted in a combined elimination of jobbers.

We contend further that they have controlled or
6591 influenced or coerced the resale prices by manufacturing distributors and that those things are all over and above the basic charge of a conspiracy to fix, at arbitrary and on non-competitive levels, the price of patented board regulated by USG bulletins. That is the basic charge.

6592 IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF COLUMBIA

Holding a Three Judge Court

Civil Action No. 8017

UNITED STATES OF AMERICA,

Plaintiff,

v.

UNITED STATES GYPSUM COMPANY; NATIONAL GYPSUM COMPANY; CERTAIN-TEED PRODUCTS CORPORATION; THE CELOTEX CORPORATION; EBSARY GYPSUM COMPANY, INC.; NEWARK PLASTER COMPANY; SAMUEL M. GLOYD, doing business under the name of TEXAS CEMENT PLASTER COMPANY; SEWELL L. AVERY; OLIVER M. KNODE; MELVIN H. BAKER; BROR H. DAHLBERG; HENRY J. HARTLEY; FREDERICK G. EBSARY; and FREDERICK TOMKINS,

Defendants.

Court Room,
U. S. Court of Appeals Building,
Washington, D. C.,
June 15, 1946.

The above-entitled cause came on for decision at 10:00 o'clock, a.m., pursuant to notice, before Honorable Harold M. Stephens, Honorable Finis J. Garrett, and Honorable Joseph R. Jackson, sitting as the District Court of the United States for the District of Columbia.

APPEARANCES:

6593 On behalf of the Plaintiff:

ROSCOE T. STEFFEN, ESQ., and EDWARD KNUFF, ESQ., Special Assistants to the Attorney General of the United States; and KENNETH R. L. LINDSAY, Special Attorney.

On behalf of the Defendants:

BRUCE BROMLEY, ESQ. and GEORGE S. COLLINS, ESQ., New York, N. Y.; CRANSTON SPRAY, ESQ., Chicago, Illinois; and HUGH LYNCH, JR., ESQ., Washington, D. C., for defendants United States Gypsum Company, Avery and Knode.

ELMER E. FINCK, ESQ., Buffalo, New York, for defendants National Gypsum Company and Baker.

CHARLTON OGBURN, ESQ., ROBERT W. BURTON, ESQ., and and ENOCH D. CHASE, ESQ., Washington, D. C., for defendant Certain-teed Products Corporation.

PETER KEBER, ESQ., New York, N. Y., for defendant Hartley.

ERNEST H. OLIVER, ESQ., and RALPH P. WANLASS, ESQ., Washington, D. C., for defendants The Celotex Corporation and Dahlberg.

JOSEPH P. TUMULTY, JR., ESQ., Washington, D. C., and ELMER E. FINCK, ESQ., Buffalo New York, for defendants Ebsary Gypsum Company, Inc., and Ebsary.

JAMES O'DONNELL, JR., ESQ., Washington, D. C., for defendants Newark Plaster Company, and Tomkins.

DAVID I. JOHNSTON, ESQ., Oklahoma City, Oklahoma, and SCOTT P. CRAMPTON, ESQ., Washington, D. C., for defendant Gloyd.

6594 PROCEEDINGS

Justice Stephens: The court reporter asks me to request all counsel who are present this morning to register their names with him before they leave the room, so that their appearance at this hearing may be shown.

The Court has reached a decision on the pending motions and has prepared an opinion expressing its reasons for the decision. The opinion will be filed with the clerk and copies will be furnished counsel. This morning there are a limited number of copies available, but there are sufficient for all counsel on the Government's and defendants' side, both; and afterwards, if you will make application for such additional copies of the opinion as you want, we will be able to furnish them early next week. The opinion includes: a statement of the facts, charges and answers, a history of the case, and a description of the motions. Then, in Topic

I, a discussion of the duty of the Court under Rule 41 (b). In Topic II, a consideration of the *General Electric* and *Bement* cases relied upon by the defendants, and of the question whether there is a parallel between the instant case and those cases. Topic III, a discussion of the burden of proof, the principles of proof and the limitations on the declarations rule. Topic IV, a discussion of the question whether there is evidence, outside the declarations received subject to connection, of the conspiracy charged. Topics V, VI and VII, a discussion of the issues of
6595 fact, and of a special contention made by the Government. Topic VIII, a consideration of the authorities principally relied upon by the Government. In the enumerated topics we have discussed with particularity the evidence and the contentions of the parties in respect of the issues of fact and law, and have set forth in some detail the reasons for the decision we reach. This has required an extended opinion. In Topic IX the case is summarized as follows:

The complaint of the Government charges violations of Sections 1, 2 and 3 of the Sherman Act and seeks, under Section 4, an injunction. It alleges that the defendants are parties to contracts in restraint of trade and commerce, and that they have combined and conspired to restrain, and have attempted to monopolize and have monopolized, trade and commerce in gypsum products, by means of the execution of sham patent licenses granted by the defendant United States Gypsum Company and accepted by the other defendants and designed only to give color of legality to the combination and conspiracy charged. It alleges that the defendants have combined and conspired to fix prices upon gypsum board and upon miscellaneous gypsum products made and sold by them, to standardize such board and its method of production, to eliminate jobbers from the distribution of gypsum products, and to induce manufacturing distributors to resell at prices fixed by the defendants gypsum board purchased from them; and it is alleged that these unlawful purposes were effectuated.
6596 Judge Garrett, Jackson and myself all concur in this opinion.

The Clerk will be handed an official signed copy of the opinion and the Clerk will now kindly hand to each of the counsel in the case a copy of the opinion. As I said, other copies will be available the first of the week.

How much time do you wish to prepare proposed findings of fact, conclusions of law, and judgment, to be served upon the Government and then presented to the Court, Mr. Bromley? Do you wish to consult with other counsel on that?

Mr. Bromley: May I, if Your Honor pleases? (Off the record consultation between Mr. Bromley and associate counsel.)

We would like thirty days, may it please the Court.

Justice Stephens: How much time would the Government like to consider the proposed findings of fact and conclusions of law, and to take into consideration whether it has any objections as to form?

Mr. Steffen: I might say, Your Honor, that I think thirty days is quite a long time. We had only fifteen days in January to prepare an itemization; but if the defense counsel think they have to have thirty days, that will
6597 be all right. We will take about five days additional to look over that.

Justice Stephens: I think your suggestion that the difference is discriminatory is not well taken. All I asked you to present in January was a brief statement of those items of evidence which you contended connected the declarations. This order on the part of the Court is the preparing of findings of fact, conclusions of law and decree.

I will say this, Mr. Bromley, that I think you gentlemen on the defendants' side will find that this opinion so very thoroughly discusses every item of fact and law, both the principal issues and the subordinate issues, that you will not find great difficulty in preparing the findings. I assume there will be an appeal in this case and we want to expedite the appellate proceedings as much as we can, so if you can serve them earlier than thirty days, please do so.

Mr. Bromley: We will, sir.

Mr. Steffen: I would like to make one point at this time on the record, and that is that we, of course, on the Government's side, do not recognize that findings are in order at this time under the rules, the new rules, and therefore we do not feel that it is necessary to have findings at all.

Justice Stephens: Do you not wish them served upon you for that reason?

Mr. Steffen: Oh yes, we ask to have them served in the usual way, but we do not think that the time taken
6598 is proper under the circumstances.

We have one or two other matters we would like to call to the Court's attention.

Justice Stephens: You will find the question of the duty of the Court to make findings discussed quite thoroughly in the topic which discusses that; I think you will find that the majority of the authorities sustain that position, and in those cases they have made findings. You will also find that the new rules proposed to the Supreme Court require them.

One other point, Mr. Steffen. The exhibits which have been in the possession of the court reporter for the convenience, during the trial, of counsel and the Court, will be transferred to the possession of the Clerk of the United States District Court and kept in his vaults with due access to counsel on both sides, in the event of an appeal.

Mr. Steffen: I may say that there will be an appeal, from the standpoint of the Government.

Justice Stephens: I assumed so, yes.

Mr. Steffen: Mr. Knuff has a point he would like to make.

Justice Stephens: Yes, Mr. Knuff.

Mr. Knuff: Shall I come to the lecturn or make it from here?

Justice Stephens: Suit your own convenience. We could probably hear you better if you came to the lecturn.

Mr. Knuff: May it please the Court, I have here
6599 an order to be signed nunc pro tunc as of November 23, 1943. You will recall that on the 15th day of November the Court sustained certain motions with reference to Paragraph 46 (a) of the complaint. Paragraph 46 (a) of the complaint was that paragraph that set up the invalidity of certain patents owned by the defendants. And I believe the Court will also recall that on the 23rd day of November of that year we filed a motion asking the Court to do two things, first, to make the opinion of the Court a part of the record; and second, to correct the opinion in accordance with the motion. The Court at that time—

Justice Stephens: (Interposing) Are you referring to the motion which was supported by Mr. Steffen's affidavit?

Mr. Knuff: That is right, Your Honor.

Justice Stephens: In which he charged the Court with having misstated the opinion?

Mr. Knuff: With misconstruing it.

Justice Stephens: Misstated was the word, Mr. Knuff.

Mr. Knuff: I haven't looked at the record recently; my

impression was that it was "misconstruing". It is my firm belief that the Court intended to grant one portion of that motion, that is, that it intended to grant that portion of the motion to make the opinion a part of the record, but at page 1430 it says this, and I am quoting from line 2: "The motion therefore to correct the record is denied." And it left up in the air, as I see it, the portion of the motion
6600 asking to make the opinion a part of the record. You denied the motion to correct, but there was left up in the air that other portion. Now I think the Court intended to make the opinion a part of the record, and I have here, and I will ask Mr. Watts to distribute it to the Court, the order that I would like to have signed carrying into effect that portion of what I conceive to be the Court's intention. This order states in part:

"It is ordered that so much of the motion which is directed to the question that the Court modify its opinion or to take such other appropriate action as the Court may deem proper to conform its opinion to the fact that the Government did not concede" and so forth "is hereby denied."

"It is further ordered that in all other respects the said motion be and the same is hereby granted."

It is simply a formal motion to get the record into what I think the Court intended.

Justice Stephens: We have never been able to understand at all why all this proceeding with respect to that opinion was necessary. Of course if you want that opinion a part of the record it will be made a part of the record, and it is so ordered now. You don't need any signed order on it, but if you want one we will give it to you. But the necessity of attempting to convict the Court of a misstatement of your argument is utterly unnecessary, Mr. Knuff. Of course the Court didn't intentionally misstate anything. If the Court misunderstood, all you would
6601 have to do would be to show that to an appellate court on the appeal. You don't need any record to do that except the record of what the Court said in its opinion as compared with your brief. However, if you want this opinion made a part of the record, it is so ordered now.

6602 Justice Stephens: Now Mr. Knuff, this order that you have handed up here for signature doesn't seem to me, nor to Judges Jackson or Garrett, to be what you

claimed it was. I thought you wanted an order
6603 making the opinion on the motion to strike Paragraph 46 (a), a part of the record, and that that was all you wanted; but you have in here a previous paragraph and an order which has to do with the refusal of the Court to correct the opinion. You got up, as I understood you, and stated that the Court had made the order declining to correct the opinion or correct the record, but had not made it clear that its opinion was a part of the record.

Mr. Knuff: That is right.

Justice Stephens: But you are asking us here to reiterate our refusal to correct the opinion. You don't need any signed order in this anyway.

Mr. Knuff: I have followed rather closely the motion that was made—

Justice Jackson: (Interposing) Why do you want this signed if all you want is that opinion in the record?

Mr. Knuff: I felt that it was the better practice to have it. Since the motion was made in writing I felt it was the better practice to have the order likewise.

Justice Jackson: What difference does that make if it is made here in open court, and it has been made?

Mr. Knuff: Well, I just don't want to have it argued at an appellate court at any other time that our record isn't in the proper shape. Now if the Court doesn't care to sign this order, that is perfectly all right; my record is then protected.

Justice Stephens: Well, the Court—

6604 Mr. Bromley: (Interposing) May it please the Court—

Justice Stephens: Just a minute, Mr. Bromley, let me read this.

Mr. Bromley: Excuse me.

Justice Stephens: This order which you have asked us to sign not only asks us to direct that the opinion be made a part of the record, as I understand it, but also asks us to reiterate our declining to amend or correct the record or the opinion. It is not necessary to sign it. The record was made, Mr. Knuff, at the time; the record that we had on that subject was made then, and for what it is worth to you on appeal, or the defendants, it is in the record. The Court is anxious to preserve a correct record, anxious to give counsel who have not prevailed in the case the fullest opportunity to urge to the Supreme Court any error that you think we have committed, and to make everything clear,

but there is no need of reiterating our refusal, as you now describe it, to correct the record or correct the opinion. That is done. In so far as making this opinion a part of the record is concerned, the opinion on the motion to strike Paragraph 46 (a), that you are entitled to and it is so ordered now, and it is now a part of the record. We don't need to sign anything.

Mr. Bromley, did you have some statement to make?

Mr. Bromley: I merely wanted to call Your Honor's attention to something I assume you know, and that
6605 is that it is in the record now as a part of the record, having been copied into the record at that time.

Justice Stephens: That is true. The Court is mystified by this whole matter. It is difficult to construe it as this, and I don't construe it as this, because I can't believe that counsel for the Government would attempt to affront the Court, but it is difficult to put any other construction upon it because if the Court erred in its construction of your argument you can prove that to the Supreme Court by what the Court said, comparing it with your argument. There is no need of filing any affidavits and putting the Court in the position of having done something wrong.

Mr. Knuff: There was no effort made on our part at all to in any way entrap the Court. We simply felt that as representatives of the Government we had a right to determine for our own selves, either rightly or wrongly, what we conceive to be the correct procedure. If the Court doesn't agree with us, that is perfectly all right. We are not going to enter into any discussions with the Court.

Justice Stephens: You may announce an adjournment, Mr. Marshal.

6606 IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF COLUMBIA

Holding a Three Judge Court

Civil Action No. 8017

UNITED STATES OF AMERICA,

Plaintiff,

v.

UNITED STATES GYPSUM COMPANY; NATIONAL GYPSUM COMPANY; CERTAIN-TEED PRODUCTS CORPORATION; THE CELOTEX CORPORATION; EBSARY GYPSUM COMPANY, INC.; NEWARK PLASTER COMPANY; SAMUEL M. GLOYD, doing business under the name of TEXAS CEMENT PLASTER COMPANY; SEWELL L. AVERY; OLIVER M. KNODE; MELVIN H. BAKER; BROR H. DAHLBERG; HENRY J. HARTLEY; FREDERICK G. EBSARY; and FREDERICK TOMKINS,

Defendants.

Court Room, U. S. Court of Appeals Building,
Washington, D. C., Friday, August 2, 1946.

The above-entitled cause came on for discussion of the Proposed Findings of Fact, Conclusions of Law, and Decree, at 10:00 o'clock a.m., pursuant to notice, before Honorable Harold M. Stephens, Honorable Finis J. Garrett, and Honorable Joseph R. Jackson, sitting as the District Court of the United States for the District of Columbia.

6607 Appearances: On behalf of the Plaintiff: George B. Haddock, Esq., Special Assistant to the Attorney General of the United States, and Kenneth R. Lindsay, Special Attorney. On behalf of the Defendants: Bruce Bromley, Esq. and George S. Collins, Esq., New York, N. Y.; Cranston Spray, Esq., Chicago, Illinois; and Hugh Lynch, Jr., Esq., Washington, D. C., for defendants

United States Gypsum Company, Avery and Knode. Charlton Ogburn, Esq., Washington, D. C., for defendant Certain-teed Products Corporation. Ernest H. Oliver, Esq., and Ralph P. Wanlass, Esq., Washington, D. C., for defendants The Celotex Corporation and Dahlberg. Joseph P. Tumulty, Jr., Esq., Washington, D. C., for defendants Ebsary Gypsum Company, Inc., and Ebsary. Scott P. Crampton, Esq., Washington, D. C., for defendant Gloyd.

6608 Justice Stephens: That is true. I think that suggested change is not necessary.

Now we have one or two other matters which won't take very long. There are some erroneous statements at one or two places in the record which we want to make comment upon and correct. At tr. 7624, on June 15, 1946, Mr. Steffen said in respect of the time requested by the defendants' counsel in which to prepare proposed findings, conclusions and decree, "I think thirty days is quite a long time. We had only fifteen days in January to prepare an itemization * * *". This statement is in error. On January 17, 1945, at the conference in Judge Stephens' chambers the following occurred (tr. 7606):

"The Judges would like to have the Government, within fifteen days—or, if you wish more time you may ask for it—file a brief statement of the items of evidence which the Government contends establish, apart from the declarations, the existence of an illegal conspiracy, and serve this, in the usual course, upon the defendants. The defendants are allowed fifteen days—or such further time if they need it, upon application—in which to comment in answer upon such items, with the usual service, of course, upon the Government."

Actually the Government took from January 17 to March 12, 1945, to wit, 54 days, to prepare and present the
6609 requested itemization. The Government's first response to the request was presented on February 6, to wit, in 20 days, but did not contain the requested itemization.

At page 2, lines 6-9 of the Government's memorandum in opposition to the motion to strike paragraph 46 (a) of the complaint (see Tr. 1437, lines 15-19) it is said:

"On August 10, 1943, *at the suggestion of the Court,* counsel for the defendants undertook to file a motion to

strike paragraph 46 (a) of the complaint upon the ground that the Government is estopped to offer any evidence at the trial showing the invalidity of the defendants' patents." (Italics supplied)

This statement, apparently intended to indicate that the court invited an attack upon paragraph 46 (a), is not correct. The facts are that when the Government filed its motion to amend the complaint by adding paragraph 46 (a), on February 24, 1943, the motion was resisted by the defendants as untimely, and it was urged that if the amendment was to be permitted it should be allowed only on condition that full particulars of the amendment should be required, time should be granted the defendants to answer or otherwise plead following the filing of the particulars, and the commencement of trial should be postponed until the defendants had had adequate opportunity to prepare and defend the new allegations; and the defendants also reserved the right to deny that the Government might legally attack the validity of a patent in the manner
6610 proposed and to argue that point at an appropriate time. The order of the court allowing the amendment reserved a right to the defendants to attack the legal sufficiency of the amendment. Thereafter, on several occasions, counsel for both the Government and the defendants raised the point, and the court recognized, that it would be desirable to have a test of the legal sufficiency of paragraph 46 (a) at some time prior to the commencement of the actual trial of the case—this in order that counsel for both sides might be advised as to whether they would or would not need to make preparation, the Government to prove, and the defendants to defend against, the allegations of paragraph 46 (a). On August 10, 1943, informal colloquy between counsel and the court was held on this subject, and it was agreed that there should be an argument on October 12 under a motion to strike. This ultimately became, at the choice of defendants' counsel, a motion in the alternative, that is, to strike or for partial judgment. The court did not invite an attack on paragraph 46 (a).

The foregoing is confirmed by the transcript at pages 357-371, under the date of March 12, 1943; at page 453, beginning with line 15, through page 468, line 21, under date of August 10, 1943; page 471, lines 17-22, under date of August 10, 1943; and pages 748-9 of the transcript, under date of November 16, 1943.

On June 15, 1946, the Government request-
6611 ed the court to sign an order granting *nunc pro tunc* the Government's motion of November 23, 1943, to make the opinion of the court on the defendant's motion to strike paragraph 46 (a) of the complaint a part of the record, and denying *nunc pro tunc* the Government's motion of November 23, 1943, to correct the record by modifying the opinion referred to, in such manner as not to indicate that the Government had conceded in its argument in opposition to the defendants' motions to strike paragraph 46 (a) that under that paragraph it sought a judicial determination that the Patent Commissioner had erred in granting the patents mentioned in that paragraph, to wit, the Roos patents. The court declined to sign the order. Thereafter Government counsel requested the clerk to file the unsigned order. The somewhat extraordinary character of these requests by Government counsel has caused the court to give further consideration to the same and to review the oral argument and memorandum of the Government in opposition to the motions to strike paragraph 46 (a) and the court's opinion on the motions to strike, and the Government's request for modification of the same. Upon such further consideration the court again declines to sign the proposed order for the reason that that which it would acomplish if signed has already been done. The opinion was copied into the transcript of record at pages 685-724; the dissenting opinion by Judge Bland, at pages
725-731. On November 29, 1943 (tr. 1434) the
6612 court ordered the opinion made a part of the record.

The motion to correct the record by modifying the opinion was denied at tr. 1430 on November 23, 1943. There is no warrant for the court's duplicating these actions. If the Government desires to make the court's denial of the motion to correct the record by modifying the opinion, a part of the record on appeal, it can do so by means of a bill of exceptions. The proposed order which Government counsel requested the court to sign on June 15, 1946, may be copied into the transcript of record. Counsel for the Government may also offer it to the clerk for filing, and if it is the practice of the clerk in this jurisdiction to accept and file unsigned orders, that practice may be carried out—if not, the clerk need not file it.

(The proposed order is as follows:)

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF COLUMBIA

Civil Action No. 8017

UNITED STATES OF AMERICA,

Plaintiff

v.

UNITED STATES GYPSUM COMPANY, ET AL.,

Defendants.

ORDER DENYING MOTION FOR CORRECTION OF RECORD

On consideration of the motion of Roscoe T. Steffen, 6613 Special Assistant to the Attorney General, filed herein on November 23, 1943, to make its opinion upon the defendants' motion to strike, etc., paragraph 46a of the complaint, a part of the record in this proceeding, and, further, to modify its said opinion, or to take such other appropriate action as the Court may deem proper, to conform its opinion to the fact that the Government did not concede either in its brief or upon oral argument as recited in the opinion that the question before the Court was whether the Commissioner of Patents had erred in issuing the five Roos patents mentioned in paragraph 46a of the complaint, accompanied by the affidavit of the said Roscoe T. Steffen, it is by the Court this day of , 1946, nunc pro tunc as of November 23, 1943,

ORDERED that so much of the motion which is directed to the same question that the court modify its opinion, or to take such other appropriate action as the Court may deem proper, to conform its opinion to the fact that the Government did not concede either in its brief or oral argument that the Commissioner of Patents had erred in issuing the five Roos patents, be and the same is hereby denied; and it is

FURTHER ORDERED, that in all other respects the said motion be and the same is hereby granted.

By the Court

HAROLD M. STEPHENS
Justice Presiding

6614 It is appropriate, in view of the Government's renewed reference to this matter, to make the following comment:

What the Government conceded or asserted in its argument in opposition to the motions to strike paragraph 46a must be determined from the argument itself, as made orally and in the memorandum of the Government. The Government's and the defendants' oral argument, including the defendant's rebuttal argument, are in the transcript of the record at pages 541 to 648, of October 18, 1943, and the Government's memorandum in opposition to the motions to strike paragraph 46 (a) is in the transcript of record at pages 1436-1496. Whether the court, as contended by the Government, misstated the Government's position, must be determined by examination of the Government's oral argument and memorandum, and examination of the court's characterization of the same in its opinion. But upon a review of the matter the court thinks there was no misstatement in its opinion. Counsel for the Government stated in the course of his oral argument (tr. 607), in answer to questions by Judges Garrett and Stephens as to whether the Government under paragraph 46 (a) was not asking of the court a judicial determination that the patents are invalid:

"I would say that you are quite right, that you would have to make a judicial determination. The difference is one in remedy. We don't ask to have it cancelled. Our only authority, as I see it here, is to enforce the
6615 Sherman Act, and that is all that we ask, that such remedies be granted as are necessary to make sure that the central policy of the Sherman Act is fully carried out. And if, in the course of that, it is necessary to say that patent number so and so is invalid, and therefore their price-fixing scheme is invalid based on that, that would be a judicial determination, but we do not ask to have the patent cancelled."

This statement was more than a concession that the question under paragraph 46 (a) of the complaint was whether the Commissioner of Patents had erred in granting the patents. It was, in necessary legal meaning, an

assertion to that effect. Paragraph 46 (a) of the complaint charged no fraud in the obtaining of the patents, or arbitrary action in granting them, and no action beyond jurisdiction of the Patent Commissioner in granting the patents. It charged that there is no real invention or novelty in the claims of the patents, that the claims disclose no patentable invention in view of the prior art, that the alleged inventions were described in printed publications in the United States more than two years prior to filing of the applications, that the alleged inventions are inoperative, that they were abandoned by the inventor and that he was guilty of laches before the applications were filed, that the alleged inventions described in the claims were not reduced to practice until after other inventors had invented and reduced the same to prac-
6616 tice and applied for patents thereon, and that the alleged inventions are described in ambiguous terms. (It was also charged in paragraph 46 (a) that the defendants had been informed of the invalidity of the claims of the patents and had unreasonably failed to file with the Commissioner any disclaimer of the claims; but this was abandoned by the Government. (See Tr. 657).) The questions raised by such allegations are precisely the questions which are committed by the statutes to the quasi-judicial determination of the Commissioner as an expert official or tribunal. See Revised Statutes Sections 4886, 4888, 4893 (1875); 35 U.S.C., Sections 31, 33, 36 (1940). Attention is particularly called to the wording of Revised Statute Section 4893, reading:

"On the filing of any such application and the payment of the fees required by law, the Commissioner of Patents shall cause *an examination to be made of the alleged new invention or discovery; and, if on such examination it shall appear* that the claimant is justly entitled to a patent under the law, and that the same is sufficiently useful and important, the Commissioner shall issue a patent therefor." (Italics supplied). Rules of Practice in the United States Patent Office (1945), 37 Code Fed. Reg. §1.133 (1939); *Abbott* v. *Coe*, 71 App. D. C. 195, 109 F. (2d) 449 (1940); and *Sloane* v. *Coe*, 74 App. D. C. 200, 122 F. (2d) 37 (1941). Both cases recognize the expert quasi-judicial functions of the Commissioner.

Therefore if the court determined that the patents
6617 referred to in paragraph 46 (a) were invalid for the reasons charged in paragraph 46 (a), it would

of necessity have determined that the Commisioner erred in issuing them—that he issued them in violation of the conditions laid down in Rev. Stat. Sec. 4886 for the granting of patents. The court did not fail to note the contention of the Governemnt that the Commissioner is overburdened and not in a position to make a searching examination and final determination of all considerations bearing upon the right of an applicant to obtain a patent, *i.e.*, the considerations of invention, utility, commercial success, novelty, anticipation, and the like, and that the Commissioner accordingly relies heavily upon the oath and affidavits of the applicant in issuing a patent. The failure of the Patent Commissioner because of overburden of work or lack of facilities or opportunity to make a searching examination of such considerations might explain an error in the issuance of patents where the conditions laid down in Rev. Stat. Sec. 4886 were not fulfilled, but it would not free his action from error. The court did not fail to notice the contention of the Government that patents granted by the Commissioner are but prima facie valid, since they may be held invalid in infringement proceedings. But assuming this, it is of no moment in the present context. The Commissioner may err in a prima facie determination as well as in a final determination.

6618 The Government cannot by any contention or form of words or affidavit avoid the plain fact that in asking for a judicial determination of invalidity of the patents for the reasons charged in paragraph 46 (a), it was in legal effect asking for a determination that the Commissioner erred in issuing them, because if the court determined that they were invalid it would of necessity have determined that the Commisioner erred in issuing them.

8717 DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF COLUMBIA

Civil Action No. 8017

UNITED STATES OF AMERICA, *plaintiff*

v.

UNITED STATES GYPSUM COMPANY, *et al., defendants*

Opinion on motions to strike certain exhibits and testimony received subject to connection and to dismiss the Government's complaint with prejudice under Rule 41 (b) of the Federal Rules of Civil Procedure

Filed June 15, 1946

[File endorsement omitted.]

Messrs. *Wendell Berge,* Assistant Attorney General; *Roscoe T. Steffen* and *Edward Knuff,* Special Assistants to the Attorney General; and *Francis R. Shields* and *Kenneth R. Lindsay,* Special Attorneys, for plaintiff.

Messrs. *Bruce Bromley, Hugh Lynch, Jr.,* and *George S. Collins,* for the defendants United States Gypsum Company, Sewell L. Avery and Oliver M. Knode; Messrs. *Nicholas J. Chase, Elmer E. Finck* and *Paul W. Lapey,* for the defendant National Gypsum Company; Messrs. *Nicholas J. Chase* and *Elmer E. Finck,* for the defendant Melvin H. Baker; *Clausen, Hirsh and Miller* and Mr. *Charlton Ogburn,* for the defendant Certain-teed Products Corporation;* Messrs. *Harold F. McGuire, F. W. H. Adams, Leonard B. Ettelson, Stephen Allie* and *Peter Keber,* for the defendant Henry J. Hartley; Messrs. *Walter G. Moyle, Ernest H. Oliver, Andrew J. Dallstream* and *Norman Waite,* for the defendants The Celotex Corporation and Bror G. Dahlberg; Messrs. *Joseph P. Tumulty, Joseph P. Tumulty, Jr., Alfred W. Varian, Herbert M. Simon* and *Elmer E. Finck,* for the defendants Ebsary Gypsum Company, Inc., and Frederick G. Ebsary; Messrs. *James O'Donnell, Jr.,* and *Benjamin P. DeWitt,* for the defendants Newark Plaster

* By *nunc pro tunc* order of the court dated April 21, 1945, effective March 17, 1945, Clausen, Hirsh and Miller and Mr. Charlton Ogburn were instituted in the place of Messrs. Harold F. McGuire, F. W. H. Adams, Leonard B. Ettelson, Stephen Allie and Peter Keber, as attorneys for the defendant Certain-teed Products Corporation.

Company and Frederick Tomkins; and Messrs. *George E. H. Goodner, Scott P. Crampton, David I. Johnston, Roy C. Lytle, James R. Keaton* and *Frank Wells*, for the defendant Samuel M. Gloyd, doing business under the name of Texas Cement Plaster Company.

Before STEPHENS, Associate Justice, United States Court of Appeals for the District of Columbia (Presiding), and GARRETT, Presiding Judge, JACKSON, Judge, United States Court of Customs and Patent Appeals, designated as Justices of the District Court of the United States for the District of Columbia.*

8718 STEPHENS, J.: This is an action in equity instituted by the United States, hereinafter referred to as the Government, to restrain the defendants from alleged violations of Sections 1, 2 and 3 of the Sherman Act. Injunctive relief is sought under Section 4.[1] The corporate defendants are: United States Gypsum Company (hereinafter referred to as USG), National Gypsum Company (National), Certain-teed Products Corporation (Certain-teed), The Celotex Corporation (Celotex), Ebsary Gypsum Company, Inc. (Ebsary), and Newark Plaster Company (Newark). The individual defendants are Samuel M. Gloyd, doing business under the name of Texas Cement Plaster Company (Texas), Sewell L. Avery, Oliver M. Knode, Melvin H. Baker, Bror G. Dahlberg, Henry J. Hartley, Frederick G. Ebsary, and Frederick Tomkins. Avery was president of USG from 1905 to 1936, and since then has been chairman of the Board of Directors. Knode is president of USG. Baker is president of National. Dahlberg is president of Celotex and chairman of the Board of Directors of Certain-teed. Hartley is president of Certain-teed. Ebsary is president of Ebsary. Tomkins is president of Newark.

The defendants are engaged in the mining of gypsum rock and in the manufacture and in the sale in interstate commerce, in the "Eastern area" of the United States, of gypsum board, gypsum plaster, and miscellaneous gypsum products defined in a bill of particulars as gypsum block, gypsum tile, and Keene's cement. The "Eastern area" in-

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* Holding a three-judge statutory court pursuant to the provisions of the Act of February 11, 1903, 32 Stat. 823, as amended by the Act of June 25, 1910, 36 Stat. 854, the Act of March 3, 1911, 36 Stat. 1167, and the Act of April 6, 1942, 56 Stat. 198; 15 U. S. C. §28 (1940).

1 Act of July 2, 1890, 26 Stat. 209, as amended by the Act of March 3, 1911, 36 Stat. 1167, and by the Act of August 17, 1937, 50 Stat. 693; 15 U. S. C. §§1, 2, 3 and 4 (1940).

cludes all of the states of the United States from the East Coast westward to and including New Mexico, Colorado, Wyoming, and the eastern half of Montana.[2]

Gypsum board consists of two outer sheets of heavy tough paper, front and back, called "liners," between which there is a lightened gypsum core which is firmly bonded to the paper. Gypsum wallboard is a product used as a finished interior wall. Gypsum lath or plasterboard is a product used as a base to which a coat of plaster may be applied. In the manufacture of gypsum products the raw gypsum rock is first subjected to calcination—the process of driving off the water of crystallization by heating. Calcined gypsum, or stucco, when mixed with water, resumes the original content thereof so that the manufactured product is chemically substantially the same as the raw rock and has the same properties. In the reforming process the manufacture of the products above described is made possible. The products are extensively used in the building industry.

8719

In the early periods of its manufacture gypsum board was crudely made by pouring buckets of calcined gypsum mixed with water in thin layers between multiple pieces of rough felt paper, smoothing the product with rollers, hardening it on racks and trimming the pieces to size. This was a hand operation. In 1912 the defendant USG commenced the development of more efficient methods of manufacture of gypsum products. An important advance was in the making, by virtue of patent No. 1,034,746, issued in 1912 to USG on application of an inventor-employee named Clarence W. Utzman, of "closed-edge board."[3] Prior to 1912 gypsum board had been made with exposed edges. This required trimming, and there was also breakage in shipping and use,

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2 As more particularly described in the complaint, the "Eastern area" includes the District of Columbia and the States of Alabama, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, Wyoming, and that portion of the State of Montana east of the counties of Phillips, Petroleum, Musselshell, Yellowstone, and Carbon.

3 Claim 1 of the patent reads as follows: "A plasterboard comprising a body, a covering of fibrous material adhering to one face of the body folded to inclose an edge of the body and overlie a portion of the opposite face thereof, and a covering of fibrous material for said opposite face of the body overlying said folded-over portion of the first mentioned covering but having its edge spaced from the edge of the board."

with consequent wastage. The making of closed-edge board solved this problem. Various other improvements were developed, including a board making machine, the use of foam as a substitute for sawdust as an "aggregate" in the gypsum core to lighten the board, and the use of starch to improve the bond between paper and core. Metallized board, gypsum board covered with metallic foil, was devised for purposes of insulation; and a gypsum lath perforated in such manner as to increase the fire resisting qualities of wall structure was devised. These improvements were covered by patents—product, process, and machine—many of which were issued to USG; others were acquired by that company. A demand arose in the trade for these improved products, and companies other than USG commenced to copy them. There ensued many years of litigation in which USG strove to enforce, and eventually succeeded in enforcing, its patent rights.

Prior to 1917 the Bestwall Manufacturing Company (Bestwall) commenced the manufacture of closed-edge board. USG sued for infringement and won. *Bestwall Mfg. Co.* v. *United States Gypsum Co.*, 270 Fed. 542 (C. C. A. 7th, 1921). Bestwall had, however, in the course of the litigation, been acquired by The Beaver Products Company, Inc. (Beaver), and USG by a supplemental bill sued both of these companies for infringement and again prevailed. *United States Gypsum Co.* v. *Bestwall Mfg. Co.*, 15 F. (2d) 704 (N. D. Ill. 1925). These decisions made the manufacture of closed-edge board by a competitor of USG impossible without infringement of USG's patent rights.
8720 This is admitted by the Government. Prior to the last mentioned decision, Augustus S. Blagden, president of Beaver, made overtures of settlement to Sewell L. Avery, president of USG; he continued these efforts after the decree under the supplemental bill. Avery, at a meeting in December, 1925, specified as terms of settlement the payment of damages by Beaver for infringement of USG's patents, acknowledgment by Beaver of the validity of USG's patents, payment of royalties, and the right in USG to fix prices of gypsum board made and sold by Beaver under the Utzman closed-edge patent. A settlement agreement was executed on July 29, 1926, Beaver paying $250,000 cash damages and USG granting Beaver a license to make, use and sell the patented products, to use the patented processes and to make and use the patented machines. The terms of the license contract are stated in greater detail below.

In September, 1925, after the decision against Beaver, USG sued The American Gypsum Company (American) and the Universal Gypsum and Lime Company (Universal) for infringement, and served a notice of infringement upon the Niagara Gypsum Company (Niagara). On September 17, 1926, a settlement and license agreement was entered into with Universal similar to that with Beaver, except that the lump sum payment was approximately $35,000. A license agreement was entered into between USG and the Atlantic Gypsum Products Company (Atlantic) on March 5, 1927. In this instance no damages were paid. Texas signed a license agreement on April 11, 1927. This contract was not by way of settlement of an existing claim of infringement, although it recited that Texas had equipped its plant to make closed-edge board and that USG was threatening to sue if such board were produced.

These four license contracts are for convenience referred to in the record as the "1926-1927 contracts." The licenses granted were under two Utzman patents No. 1,034,746 (the product patent) and No. 1,029,328 (a process patent), and under a third Utzman patent No. 1,330,413 (a machine patent), expiring February 10, 1937, under a Birdsey patent No. 1,358,508 (a product patent for partially closed-edge board), and under some sixty or more other patents and applications for patents. The material provisions of the contracts were these: USG granted an indivisible and non-exclusive license until the expiration of the Utzman machine patent on February 10, 1937. It reserved the right to fix during the life of the Utzman product patent, expiring August 6, 1929, the minimum prices at which the licensees might sell board embodying the disclosure of that patent, but at not more than the prevailing market price. The licensees agreed to pay specified royalties on all gypsum board manufactured by them, whether patented or unpatented, until February 10, 1937, the date of the expira-
8721 tion of the machine patent; they acknowledged and agreed not to contest the validity of the patents under which the licenses were granted; they agreed that all of the patented products sold by them and known in the trade as "seconds" should be invoiced and marked as "seconds." USG agreed that the licensees might sell patented gypsum board to manufacturers of plaster and gypsum products who did not themselves make board (referred to in the record as "manufacturing distributors"), the royalties payable to remain based upon the regular selling price of the licensees to the regular dealer trade. The licensees

agreed to keep separate records showing the quantity of all board sold by them, and periodically to render reports to USG showing the quantities and prices of their sales. USG reserved the right to inspect and to make copies of the licensees' memoranda from such records.

In May, 1929, following further litigation, four more license contracts were entered into between USG on the one part and Certain-teed, National, Ebsary, and Niagara, on the other part. In 1923 Certain-teed, originally a manufacturer of roofing products, entered the gypsum industry with the acquisition of the Acme Cement Plaster Company (Acme). In 1926 it commenced the manufacture of open-edge gypsum board at the former Acme plant in Texas. On January 20, 1928, it purchased the assets of Beaver. Beaver was then making a closed-edge board. Certain-teed refused to assume the Beaver-USG settlement agreement and license. USG thereupon, on or about February 21, 1928, instituted suit in the District Court of the United States in Illinois against Certain-teed and Beaver, seeking an injunction against the distribution of the proceeds of sale to the Beaver stockholders and asserting that Certain-teed should be required to assume all liabilities of Beaver under its settlement agreement and license. Certain-teed was required to put up a million dollar bond, or otherwise to suffer a temporary injunction, as security for damages which might be found due to USG. On May 22, 1929, Certain-teed settled this suit with USG, agreeing to pay damages of approximately $64,000 and to fulfill the obligations of Beaver under its original settlement agreement and license; USG executed in Certain-teed's favor a patent license agreement and the suit was dismissed and the bond released. A supplemental license agreement between USG and Certain-teed covering a bundling process patent, more particularly referred to below, was executed on July 3, 1929. On May 16, 1929, National settled two patent infringement suits which USG had brought against it, one on November 5, 1926, the other on May 7, 1928, paying on account of damages approximately $178,000 and entering into a patent license agreement with USG. National had commenced the manufacture of a modified closed-edged gypsum board in 1926.

Ebsary, which had commenced making open-edge
8722 gypsum board in 1928, was granted a patent license by USG on May 22, 1929. This license was not a part of settlement of an infringement claim, since Ebsary had not manufactured closed-edge board and there was no infringement suit or basis therefor against it.

Niagara commenced making an open-edge gypsum board, but later made board with a semi-protected edge covered by a Clark application for a patent owned by American. This board had been developed by American in an attempt to compete with USG's closed-edge board. USG claimed that this board infringed its Birdsey patent No. 1,358,508 covering the manufacture of board with a partially closed edge. Priority over the Clark application had been awarded Birdsey by the Commissioner of Patents; this was affirmed by the Court of Appeals of the District of Columbia in 1926. *Clark* v. *Birdsey*, 56 App. D. C. 136, 10 F. (2d) 1001. A contract of settlement was entered into between Niagara and USG. This contract is not in evidence but is referred to in a later license agreement between Niagara and USG dated October 8, 1929, in which it appears that the earlier contract provided for money damages to USG in the sum of approximately $28,000 and a patent license to Niagara. These four license contracts between USG on the one part and Certain-teed, National, Ebsary and Niagara on the other part, are called the "May 1929 contracts" in the record. The provisions of these four contracts were in substance the same as those of the 1926-1927 license agreements except that in the May 1929 contracts USG's right to fix minimum prices was not limited as in the previous agreements, and sales to manufacturing distributors and jobbers were permitted only on USG's written consent. These contracts involved the same patents as the 1926-1927 agreements, with a Birdsey "bundle" patent No. 1,696,877 added covering a method of bundling gypsum board for shipment by binding several boards together into a stack through the application of a gummed tape lengthwise along the edges of the boards. Use of this bundling process was required by the contracts.

There remain to be described the litigation and negotiations leading up to the execution of certain "November 1929 contracts" and the terms thereof.[4] In 1929 USG owned three applications for patents of Carlisle K. Roos covering cellular core gypsum board produced by the employment of foam or a foaming agent in the core of the board to produce a multitude of cells or voids thereby lightening the board,

4 As will be noted, most of these license agreements were executed on various dates during October, 1929, but they became effective on November 5, 1929, and have been referred to throughout the record as the "November 1929 contracts."

eliminating the use of sawdust, which had been an
8723 unsatisfactory material, as an "aggregate," and resulting in quicker drying. These applications were in interference with an application for a patent by Erick Christian Bayer, a foreign patentee, the American rights to whose patent had been acquired by USG. The Roos applications prevailed in the interference proceeding and Roos patents Nos. 2,017,022,[5] 2,079,338, and 2,080,009[6] were ultimately issued to USG (October 8, 1935, May 4, 1937, and May 11, 1937, respectively). On May 23, 1929, after the last of the May 1929 license agreements had been executed, Avery of USG described the scope and nature of the Roos bubble board invention and outlined its advantages, including weight reduction, lower freight cost, elimination of the sawdust problem, easier handling and quicker drying, and offered the various licensees above referred to a license on this invention.

Shortly after this, Universal through its president and co-receiver, Eugene Holland, claimed that USG, by using starch in its board to obtain adhesion between the core and paper liners, was infringing two patents owned by Universal known as the Hite and Haggerty patents Nos. 1,230,297 and 1,500,452, respectively. The Hite patent covered a heat insulating material and method of making the same. The Haggerty patent covered a gypsum plaster wallboard employing starch or a cooked carbohydrate in the core of the board to insure a good bond between the core and the paper covering sheets.[7] This had solved the "peeler" trouble in the gypsum board industry and made possible modern high speed production of gypsum board. Without it, high temperatures used to expedite drying of the board would result in defective board in the form of "peelers." In 1927

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5 Claim 9 of the patent reads as follows: "A light weight building material composed of a hard mass of cellular structure which comprises set cementitious material having permanently fixed therein foam cells that possess their original form and which are arranged throughout the structure in foam-like formation."

6 Claim 17 of the patent reads as follows: "A wallboard comprising a porous body of hardened cellular cementitious material enclosing a plurality of voids encased in tough pliable films, and cover sheets therefor which are applied by means of pressure when said cementitious material is in a plastic state whereupon said cover sheets remain bonded to said cementitious material after the same has set and hardened."

7 Claim 2 of the patent reads as follows: "A wallboard consisting mainly of gypsum and having a paper liner, cooked starch being incorporated with the gypsum in about the proportion of 2 lbs. of starch to 40 lbs. of gypsum, to insure adhesion of said paper liner."

Universal had brought suit in the United States District Court in Buffalo, New York, against National for infringing of the Haggerty patent, demanding an injunction and an accounting, and the court had ruled that the Haggerty patent was valid and infringed (*Universal Gypsum & Lime Co.*, v. *Haggerty*, 21 F. (2d) 544 (W. D. N. Y. 1927)), and National had posted a substantial bond rather than suffer enforcement of a temporary injunction. Avery told Holland that it was not USG's policy to infringe patent rights
8724 and that he would investigate the claim. In June and July of 1929 negotiations were going on between USG and its various licensees in respect of a possible license covering the bubble board invention, and the various companies were investigating to ascertain whether the invention had merit. During this same period Holland continued to discuss with Avery separately the matter of the alleged infringement of the Haggerty and Hite starch patents. As a result of these discussions USG agreed to purchase and did purchase these patents. Universal was in receivership and the sale was a favorable one from its standpoint because it provided Universal with substantial funds permitting it to reorganize and emerge from receivership with its accounts paid. The original and ancillary proceedings were in seven different Federal district courts and the sale was approved by all of these courts on or about November 5, 1929. The sale was consummated in a license contract of November 5, 1929, which settled a claim of USG against Universal for infringement of USG's partially closed-edge patent and the claim of Universal against USG for infringement of the Hite and Haggerty patents.[8] The Hite and Haggerty patents were assigned to USG with reservation of royalty to Universal. Universal was itself granted a license under these patents and under the Birdsey patent No. 1,358,508 and under patents which might be issued under the Roos and Bayer applications and under numerous other patents. This license contract superseded the 1926 license agreement between USG and Universal. In August, 1929, USG had announced its arrangement to purchase the Haggerty and Hite patents and offered its licensees new licenses which would replace the prior license contracts and

8 Although Birdsey patent No. 1,358,508 for partially closed edge gypsum board was included within the patents which were the basis of the USG Universal license contract of September 17, 1926, there was apparently still outstanding at the time of the execution of the license contract of November 5, 1929, an infringement claim by USG against Universal under this Birdsey patent. See page 2 of the license contract of November 5, 1929, Government Exhibit 6.

include in one document the outstanding patents of the earlier licenses, the Haggerty and Hite patents, and the applications for patents on the Roos bubble board invention. This offer was made subject to the approval of the district courts above referred to.

Niagara on October 8, 1929, Certain-teed on the 15th, National on the 17th, Ebsary on the 18th, and Atlantic on the 21st, entered into new patent license contracts with USG which superseded the previous agreements between these companies and USG, and these new contracts covered the Hite and Haggerty patents and also the anticipated patents under the Roos and Bayer applications.

As stated above, USG had in September, 1925, instituted a suit against American for infringement of USG's closed-edge patent. It had also in the same month commenced a suit against American for infringement of the Birdsey patent on partially closed-edge board. American attempted to obtain a more favorable settlement than had been granted to other infringers. USG's infringement suit with respect to the Birdsey patent had been postponed pending settlement negotiations, reinstated, and ultimately tried and decided in favor of USG. Settlement discussions by
8725 American were resumed, with renewed efforts to obtain concessions, with USG. On November 25, 1929, American finally settled its outstanding litigation with USG on the terms originally offered, *i.e.*, on terms similar to those of the earlier settlements with other companies, and accepted a license from USG similar to the license contracts of the other licensees. American paid in settlement of past infringement approximately $152,000. On April 23, 1930, Kelley Plasterboard Company, Inc. (Kelley) took a similar license.[9] Texas did not enter into a license contract in 1929, but continued as a licensee under its license of April 11, 1927, although it was not subject to price control after August 6, 1929, the date of the expiration of the Utzman closed-edge patent. Upon the expiration on February 10, 1937, of its license of April 11, 1927, Texas accepted a further license contract similar in form to the November 1929 contract with the other licensees. This completed the execution of the nine contracts generally referred to in the record as the "November 1929 contracts" (although the Texas contract was not executed until 1937 and the Kelley contract

9 On January 3, 1939, USG consented to the assignment of this license to Newark.

not until April 23, 1930) with Niagara, Certain-teed, National, Ebsary, Atlantic, Universal, American, Kelley, and Texas. Each of these contracts extended licenses under the Haggerty and Hite patents, under patents which might be issued under the Roos and Bayer applications, and under a large number of patents still vital which had been the subject of the previous contracts, including the Utzman machine patent No. 1,330,413, Birdsey patent No. 1,358,508 on the partially closed-edge board, the bundle patent No. 1,696,877, and under patents which might be issued under several additional applications for patents. These November 1929 contracts were in general in the same terms as the earlier contracts. Each contained a "most favored nation" clause providing that if subsequent to the effective date of a particular agreement USG should grant to any other person, except to Universal, a license more favorable in terms, then USG would grant to the particular licensee a license on the same terms. The Texas contract alone in its "most favored nation" clause did not contain the exception to Universal. The price fixing clause contained a provision that the minimum prices fixed by USG should not be more than those at which USG determined to sell gypsum board or other products embodying the inventions claimed in the patents to its own like trade in the same market. Use of the Birdsey bundling process by the licensees was made optional.

It will be noted that the nine license contracts last above described involve only five of the named defendants—USG, Certain-teed, National, Ebsary, and Texas, leaving Celotex and Newark unmentioned. It will be noted also that the five companies—Niagara, Atlantic, Universal, American, and Kelley—parties to the November 1929 license contracts are not defendants. This is to be explained as fol-
8726 lows: Niagara was acquired by USG in 1929. National acquired Universal in 1935 and Atlantic in 1936. Newark acquired the stock of Kelley in 1937 and merged with Kelley in 1939. Celotex acquired American in 1939. Upon acquiring these companies respectively National, Newark and Celotex took over the licenses which had been entered into by Universal, Atlantic, Kelley and American with USG.

In addition to the 1926-1927, May 1929, and November 1929, contracts which related to gypsum board as such, certain additional contracts, sometimes referred to in the record as "subordinate contracts," relating to metallized board

and perforated lath, were executed as follows: At various times in 1934-1935 USG as owner of Roos patent No. 1,914,345 covering the use of metallic foil as a thermal insulating element in wallboard granted licenses to various other companies. The license contracts in evidence are those of National of October 5, 1934, Kelley of October 12, 1934,[10] Certain-teed of November 2, 1934, Atlantic of November 30, 1934, American of December 4, 1934,[11] Universal of April 4, 1935, and Ebsary of August 14, 1935. In these contracts USG granted licenses to make, use and sell plasterboard having a metallized surface embodying the inventions disclosed and claimed in the patents or patent applications covered by the contracts, and reserved the right to fix the minimum prices on board embodying the inventions in question, but at not more than USG's own price in the same market. The licensees agreed to pay a royalty for all plasterboard having a metallized surface manufactured and sold by them and covered by the claims of the patents issued or to be issued under applications for patents. The licensees agreed not to sell metallized board to other board manufacturers except upon USG's written consent, and not to sell to anyone on consignment. They agreed to acknowledge and not to contest the vadidity of the patents issued or to be issued and to record the quantities of metallized board manufactured "and/or sold," USG reserving the right to inspect and copy such records. Each licensee was accorded the position of a "most favored nation" with respect to licenses under these patents.

Similarly USG was the owner of Roos patent No. 1,938,354 covering a fire resistant plasterboard. This board had holes of given size punched through it at designated intervals. Upon application of a coat of plaster the same pushed its way through the holes and hardened into a mechanical key with consequent improvement of the fire resistant qualities of the wall in which such plasterboard was used. USG granted patent licenses to Certain-teed on June 8, 1936, American on July 10, 1936, Ebsary on February 2, 1937, and Kelley on June 23, 1937, for the manufacture, use and sale of this board. In substance the terms of these
8727 licenses were the same as those of the metallized board license contracts. Later USG offered a re-

10 On January 3, 1939, USG consented to the assignment of this contract to Newark.

11 This contract was assigned to Celotex on April 12, 1939.

vised perforated lath license to its licensees royalty free, *i.e.*, extended an offer to include the perforated board patent in the basic board license agreement at no additional royalty. Such revised licenses were accepted by Certain-teed, Ebsary and Kelly.[12]

Minimum price bulletins were sent out by USG to its licensees under the various license contracts, except during the period from August 6, 1929 (the date of expiration of the Utzman product patent No. 1,034,746), until the date of the execution of the November 1929 contracts. The price bulletins are limited in their application to patented board manufactured and sold by the licensees under their respective licenses. The price on board was calculated on the basis of a mill price plus freight from the nearest mill (freight-wise) to the point of destination. The bulletins provided for prices on various quantities of board such as carloads, less-than-carloads, and truckloads. In particular markets, such as metropolitan areas, where it was economic to deliver gypsum board in truckload quantities, prices were established for such quantities and the areas in which such prices were to apply were defined. Outside of such areas a higher price was fixed. Provision was made in various instances for a variation in price to cover pool car shipments, railroad switching charges, and "pick-ups" at a mill. The bulletins contained provisions purposed to prevent the violation of the minimum price requirements through such devices, in connection with a sale of board, as the giving away of board as "dunnage," making advertising allowances to the customer, granting of fictitious damage claims, splitting of commissions with the customer by commission salesmen, paying of unearned warehousing charges, fictitious hiring of customers' trucks, giving away of plaster or other products, or the sale of such products at a price unusually below the licensee's prevailing market price. There is set out in the margin a more detailed description of the price bulletins.[13]

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12 On January 3, 1939, USG granted Newark, which had merged with Kelley, a royalty free perforated lath license, at the same time canceling the Kelley revised license.

13 There were two general classes of provisions. The first related to prices as such and the second related to protecting the prices set. The first class of provisions made an affirmative statement of the minimum price which might be charged by a licensee for board embodying the licensed inventions. For this purpose the overall market was variously divided. The basic list of prices was for carload shipment to dealers so set up as to divide the market territorially

(*Continued*)

8728 During the periods when price bulletins were sent out by USG to its licensees each licensee, in the main, sold gypsum board manufactured by it at the prices and upon the terms and conditions stipulated in the bulletins. No bulletins have been sent out since July 8, 1941.

8729 In 1932 USG set up as a department a wholly owned corporation called the Board Survey Company. Its function was to receive complaints of license violations, to investigate the facts, call them to the attention of the licensee involved, and upon occasion to the attention of the licensor USG. Board Survey Company was organized by USG for the purpose of bringing about compliance with the licenses. The licensees had no part in its formation, management or operation. From time to time a representative of USG, as licensor, met

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by the use of mill basing points, the delivered price to dealers being determined by taking the lowest combination of mill base price plus freight from that point to destination. A standard billing weight was given per thousand square feet of different thicknesses of board. These were for standard dimensions, a differential being added to the base price for odd sized products. Special prices were stated for cut stock of stated thicknesses f.o.b. certain mills in named markets. Superimposed on this basic price system were variations stating flat delivered prices for delimited areas, defining as single delivery points described metropolitan areas, stating special base prices for some thicknesses of board shipped from named base points for delivery in limited territories, providing for variations in price and/or allocation of charges (*i.e.*, to dealer or shipper) for special shipments such as mixed cars, pool cars, and stopover cars, with territorial variations; and there were provisions for special prices for particular jobs, types of jobs, or types of purchasers other than dealers, *e.g.*, contractors, prefabricated house makers, Century of Progress, and the like. Special discounts were provided for sales "to other manufacturers" where permitted. In fine, prices were varied according to the following factors in various combinations: style of product, amount of product, territory, form of shipment, nature of use, and type of purchaser.

The bulletins covering perforated lath were less detailed and less numerous (apparently because of the subsequent inclusion of the perforated board patent in the basic board license agreement), but they involved the same factors as above named.

The provisions described above were substantially duplicated with respect to a separate set of prices applicable to delivery f. o. b. dealers' trucks at given mills or warehouses. This type of transaction was called a "pick-up," and it appears that the bulletins did not contemplate such deliveries at any other places than at those listed or delivery of less than a stated minimum number of square feet. There was no provision in the bulletins for sales to purchasers other than dealers, except for the provisions above referred to in respect of contractors and prefabricated house manufacturers and the like, and "other manufacturers."

The second class of provisions, referred to above as related to price protection, were first in the following form:

"Allowances, Etc.: The minimum price fixed by licensor for patented board and/or lath shall not be reduced below such minimum price or prices by or through allowances, payment or rebate to customers for use of railroad siding, for switching performed after car has been originally set for un-

(*Continued*)

with representatives of the licensee companies for the purpose of explaining to them the provisions of the minimum price bulletins and for the purpose of securing adherence to such minimum prices by the licensees.

The defendants and their predecessors in interest were, at the time the license agreements were entered into, competitors in the manufacture and sale of substantially all of the gypsum board and a substantial part of the gypsum plaster made and sold in the "Eastern area," and the defendants now make and sell substantially all of the gypsum board and a substantial portion of the plaster in the "Eastern area." Sales of gypsum products are largely to retail dealers in building materials and mason supplies, rather than to building contractors and ultimate consumers.

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loading; for warehousing, trucking or unloading, or other service by them in connection with shipments or deliveries of patented board and/or lath. Nor shall such net cost to customer be reduced below such minimum price or prices by the establishment or continuance of warehouses with dealers or other buyers; or through allowance or adjustment on board which customer claims is of poor grade and not up to standard, except when such an allowance or adjustment on substandard board is first authorized by the licensor; or by allowance for any other reason whatsoever by a license direct or by a salesman of patented board out of his own compensatio ; or through the extension of other than regular terms to any such dealer or buyer. Quotations deducting the regular cash discount so that the quoted price is less than the minimum price to the licensee, are considered as quotations to sell at less than the minimum price and therefore in violation of the license agreement. On quotations to U. S. Government regulation minimum delivered price less 2% of delivered price (cash discount) shall be the minimum price.

"Also, where a salesman selling patented board to a customer is authorized by licensee or its agent to sell the same wholly or partly on a commission basis, or where a salesman not employed by licensee makes a sale of patented board to a customer on a commission basis and licensee or his agent accepts such sale, in either of such events the commission paid by the licensee is a deduction from the price at which the board is sold by licensee, and where, after deducting such commission, the amount is less than the minimum price, licensor shall regard the sale as made at a price less than the minimum price fixed by licensor and a violation of the terms of the license agreement. Licensor also regards sales of patented board by commission salesmen, without the written consent of licensor, as a violation of the terms of the license agreement." See pages 3-4 of Government Exhibit 37, a bulletin of February 24, 1937.

Later another form was used, to wit:

"*Rebates, Allowances, Etc.*

"Any sale of patented products, though ostensibly made at or above the minimum price established by licensor, will nevertheless be considered a violation of the provisions of the license if licensee directly or indirectly reduces the actual price charged by licensee below such minimum price by granting the customer rebates, unearned or unwarranted refunds, credits or discounts, by reducing the price of other products, by hiring customers' trucks, by granting allowances for advertising or other purposes, by splitting of salesmen's compensation or commissions with customers, by overshipment of patented products, by including board under the guise of dunnage, or by making any other payment or allowance in the form of money or otherwise which has for its purpose and effect reducing the price charged by licensee below such minimum price." See page 2 of Government Exhibit 37, a bulletin of February 6, 1939.

The Government's complaint covers 33 closely printed pages, including 123 numbered paragraphs, and there is an appendix of an additional 94 pages. The charges are generalized in paragraphs 44 to 46 (a), inclusive, of the complaint as follows:

44. Defendants are, and have been for many years last past, parties to contracts in restraint of trade and commerce in gypsum board, plaster, and miscellaneous gypsum products among the several States, in violation of Section 1 of the Sherman Antitrust Act. Defendants are, and have been for many years last past, actively engaged in a continuing combination and conspiracy in restraint of trade and commerce in said gypsum products among the several States, in violation of Section 1 of the Sherman Antitrust Act. Defendants are monopolizing, and have monopolized for many years last past, trade and commerce in said gypsum products among the several States, in violation of Section 2 of the Sherman Antitrust Act. Defendants are, and have been for many years last past, attempting to monopolize trade and commerce in said gypsum products among the several States and are, and have been for many years last past, actively engaged in a continuing combination and conspiracy to monopolize trade and commerce in said gypsum products among the several States, in violation of Section 2 of the Sherman Antitrust Act. Defendants are, and have been for many years last past, parties to contracts in restraint of trade and commerce in said gypsum products between the States and the District of Columbia, in violation of Section 3 of the Sherman Antitrust Act. Defendants are, and have been for many years last past, actively engaged in a continuing combination and conspiracy in restraint of trade and commerce in said gypsum products between the States and the District of Columbia, in violation of Section 3 of the Sherman Antitrust Act. Said unlawful contracts, combination, conspiracy, monopoly, and attempt to monopolize will be referred to hereinafter as the combination.[14]

45. Said combination has been formed, has been carried out, and is being carried out by each of the defendant companies (acting, in part, through those of their officers

14 For convenience the term "combination" will sometimes be used in this opinion, as it is in the complaint, to refer to the alleged unlawful contracts, combination, conspiracy, monopoly and attempt to monopolize.

and directors made defendants herein) and by other companies hereinafter referred to engaged in the manu-
8730 facture of said gypsum products. Said companies have entered into, have carried out, and are carrying out said combination for the purpose, and with the effect, of restraining, dominating, and controlling the manufacture and distribution of said gypsum products in the Eastern area by:

(a) Concertedly raising and fixing at arbitrary and non-competitive levels the prices of gypsum board manufactured and sold by said companies in the Eastern area;

(b) concertedly standardizing gypsum board and its method of production by limiting the manufacture of board to uniform methods, and by producing only uniform kinds of board, for the purpose, and with the effect, of eliminating competition arising from variations in methods of production and in kinds of board manufactured and distributed in the Eastern area;

(c) concertedly raising, maintaining, and stabilizing the general level of prices for plaster and miscellaneous gypsum products manufactured and sold by said companies in the Eastern area;

(d) concertedly refraining from distributing gypsum board, plaster, and miscellaneous gypsum products manufactured by said companies through jobbers in the Eastern area, and concertedly refusing to sell said products to jobbers at prices below said companies' prices to dealers, for the purpose, and with the effect, of eliminating substantially all jobbers from the distribution of said gypsum products in the Eastern area;

(e) concertedly inducing and coercing manufacturing distributors to resell, at the prices raised and fixed by said companies as aforesaid, gypsum board purchased from said companies.

46. Said combination was entered into and has been, and is being, carried out by the defendant companies in part under the guise of numerous license agreements purporting to relate to the use of certain patents owned by the defendant U.S.G. in the manufacture of gypsum board. To give color of legality to said combination, the defendant companies, and other companies hereinafter named, concertedly agreed among themselves to enter into, and did enter into, said license agreements. Said license agree-

ments are not bona fide patent license agreements reasonably designed to secure to U.S.G. the pecuniary reward for valid patent monopolies, but were entered into and executed for the illegal purposes described in paragraphs 44 and 45 hereof. The formation and operation of said combination is more fully set forth in paragraphs 47 to 120 hereof.

(a) Many of the patents mentioned and described in said license agreements by which the said combination has been, and is being carried out in part, are process or machine patents. The said patents mentioned and described in the said license agreements, even assuming they are valid, are not basic article or product patents and do not singly or all together cover completely the business of mining and selling gypsum, or cover completely gypsum board, which is one of the forms in which unpatented gypsum is sold by the defendants, but at most constitute minor additions to the established and unpatented art of making gypsum board and afford no legal justification for the said combination.

Paragraphs 47 to 120 of the complaint detail the generalized charges above set forth. It is not possible to state this detail within a reasonably limited space, but it will be of some aid to an understanding of the questions presented by the motions now before the court if these paragraphs are summarized. They allege that:

The combination was formed during the period between September, 1925, and early in the year 1930. The plan for stabilization of prices grew out of the efforts of the parties to the early patent infringement disputes to settle their differences. Avery as president of USG, Blagden as president of Beaver, and Griswold as vice-president of American decided to induce the industry to enter into license agreements containing price fixing provisions under USG's dominant Utzman closed-edge board patents, Blagden and Griswold agreeing to act as contact men with the industry. In negotiations in 1926 the industry responded favorably, but there was disagreement over the terms of the proposed licenses and only Beaver and Universal signed agreements in that year; but further efforts of the proponents of the plan resulted in the signing of the contracts in 1927 by Atlantic and Texas. Increasing competition in the industry, and declining prices for all gypsum products during 1927 and 1928, revived interest in price

stabilization, and Holland as president of Universal agreed with Avery to promote the stabilization plan. From time to time in the latter part of 1928 and the early part of 1929 conferences and meetings were held by companies not yet licensed. The Utzman patent on closed-edge board was to expire, however, in August, 1929, and in view of that fact Avery for USG assured prospective licensees that, if the agreements proposed were signed, USG would look for an additional patent under the color of
8731 which prices could be controlled. In reliance upon this assurance Certain-teed, National, Ebsary, and Niagara signed the May 1929 contracts. But not all of the agreement between USG and these companies was put into formal writing. On the contrary, in addition to the signed license agreements, informal side agreements were made between USG and its licensees that they would discontinue making unpatented open-edge board and second-class closed-edge board; that they would dispose of inventories of such board at prices fixed by USG; that thereafter they would manufacture and sell a closed-edge board manufactured and bundled by the processes and methods used by USG; that USG would advance and stabilize the prices for board; that all companies would increase their prices for other gypsum products; and that USG would continue to control prices through the use of other patents after expiration of the Utzman product patent in August, 1929.

Immediately after the May 1929 license contracts were executed USG, pursuant to its argreement to find a patent under which to continue price control, offered additional licenses under the foam process. Universal then sought to induce USG to purchase the Hite and Haggerty starch patents by a claim that the use of farinaceous paste in the foam process infringed them. USG knew that this claim had no basis in fact, and knew also that there were other and non-infringing methods of reinforcing the bubbles in the foam, and had advised its licensees to that effect. Nevertheless, the sale by Universal to USG was agreed to and consummated and the November 1929 contracts were signed—all for the purpose of giving color of legality to price control by USG pending issuance of patents under the foam process. Again, in addition to the formal writings, there were side agreements to the effect that the use of adhesives in the manufacture of board to increase the bond between core and liners—there had been such use

for many years prior to 1929 by the licensees other than Ebsary and Kelley—would be considered to fall within the scope of the Hite and Haggerty patents for the purpose of permitting price control by USG during the life of these patents; that Ebsary and Kelley would commence to use adhesives for the same purpose; and that the licensees, as soon as they could equip their plants, would manufacture and bundle by substantially the same processes as those employed by USG.

USG and certain of its licensees entered into separate patent license agreements relating to metallized board and perforated lath, for the purpose of extending and strengthening the operation of the basic license agreements.[15] At the time of the execution of the metallized board agreements, during 1934-1935, none of the licensees, except National, intended to manufacture such board, but, as USG well knew, to purchase it from USG or National for resale to dealers and consumer; USG, notwithstanding this, required the licensees to execute these agreements in order to be enabled to purchase metallized board for resale; USG fixed the minimum prices and terms and conditions of sale of metallized board with the knowledge and notwithstanding the fact that a substantial part thereof sold by the licensees, except National, was purchased from National and USG. USG, as an inducement to the licensees to sign the perforated lath contracts in 1936-1937, agreed to fix prices on such lath at a differential above plain lath; the agreements were signed in reliance upon this inducement and USG fixed the prices at a differential above the price of plain lath, and the licensees sold perforated lath at such prices. At the time of the execution and throughout the period of operation under the perforated lath contracts, USG, Certain-teed, and American were informed, sometimes by patent counsel, and believed, that the perforated lath patent was void; and the companies entered into these license agreements principally for the purpose of enabling USG to fix the prices of perforated lath sold by it and its licensees. These agreements were not bona fide license agreements, and the exercise of price control by USG under them was not reasonably adapted to protect the pecuniary rewards of a patentee under a lawful patent monopoly.

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15 The licensees who executed contracts relating to metallized board and perforated lath have been named in the statement of facts above.

In paragraphs 121 to 123 of the complaint the alleged effect of the combination is stated. It is, in substance, charged that:

By means of the combination the defendants have controlled and dominated for more than ten years the manufacture and distribution of 100 percent of the gypsum board and 80 percent of the plaster and miscellaneous gypsum products manufactured and sold in the "Eastern area," and they will continue to do so, unless restrained, until 1954 when the last of the USG patents on the foam process expires. Since 1929 all gypsum board sold by all manufacturers and manufacturing distributors in the "Eastern area" has been sold at uniform and non-competitive prices dictated by USG, with resultant elimination of price competition in the distribution of gypsum board from manufacturers to dealers. For the purpose of maintaining these uniform and non-competitive prices, the defendants have standardized the manufacture of board, have limited its distribution to themselves and certain manufacturing distributors, and have eliminated wholesale dis-
8732 tributors who might fail to maintain such prices.

The uniform and non-competitive prices have been, throughout the period of the operation of the combination, substantially higher than those prevailing at the time of its formation in 1929, and have failed to reflect substantial reductions in manufacturing costs. Each of the defendants has thereby realized substantial profits. The uniformity among the defendants in the distribution of gypsum board has reflected itself in uniformity in the distribution of plaster and miscellaneous gypsum products by the defendants. They now distribute certain products on the basis of many of the terms and conditions of sale prescribed by USG for gypsum board.

It will be seen that the charges above summarized reduce themselves in essence to the following: (1) That the license contracts entered into between the defendant USG, as licensor, and the other defendants, as licensees, are themselves illegal as in restraint of trade in view of the nature of the patents upon which the contracts are based, in view of the fact that USG and the plurality of defendant licensees manufacture all of the gypsum board in the "Eastern area," and in view of the terms and conditions of the contracts, including those providing for the establishment of minimum prices on patented gypsum board to be made and sold by the defendants. (2) That the

license contracts, even if valid on their face, were not entered into as bona fide license agreements, reasonably designed to secure to USG the pecuniary reward for valid patent monopolies, but were executed by the defendants merely to give color of legality to a combination to restrain trade, by control of the prices and terms and conditions of the sale of gypsum board, plaster, and miscellaneous gypsum products throughout the gypsum industry. (3) That the defendants' operations were carried beyond the proper limits of a patent monopoly and licensing thereunder by raising and fixing at arbitrary and non-competitive levels the price of gypsum board made and sold by the defendants, by improper standardization of gypsum board and its method of production, by raising, maintaining and stabilizing the level of prices of unpatented materials—plaster and miscellaneous gypsum products—by effectuating improper restriction upon distribution of gypsum board, plaster and miscellaneous gypsum products, and by fixing the prices at which manufacturing distributors resold gypsum board.

The theory of the Government's charge, with respect to connecting the various defendants with the violations of law alleged, is that as each defendant became a party to a license agreement, either immediately or through acquisition of a company already licensed, it did so with knowledge of the existence and operation of the combination and thereby became a party thereto.

The defendants' answers to the charges made in the complaint cover 165 pages including 638 paragraphs. It is not possible in reasonable space to state the answers in detail. They may be generalized as follows:

The defendants admit the execution of the 1926-1927, May 1929, and November 1929, patent license agreements, and admit the fixing of prices thereunder by USG upon gypsum board and lath manufactured and sold under such contracts, by virtue of price bulletins sent out by
8733 USG from the date of execution of the several license agreements until July 8, 1941, except for the period from August 6, 1929, the date of expiration of the Utzman closed-edge board patent, No. 1,034,746, to the date of the execution of the November 1929 contracts, and except that Texas was sent no bulletins from August 6, 1929, to February 10, 1937, the date of execution of its second license contract. The defendants admit that they sold such gypsum board at the prices stated in the bulletins.

The defendants USG, National, Certain-teed, Ebsary, and Newark admit the execution of the metallized board contracts and admit that USG determined minimum prices for board manufactured and sold under such contracts from the date of their execution until the date of the filing of the complaint. The defendants USG, Certain-teed, Ebsary, and Newark admit the execution of the perforated lath contracts and admit that USG determined minimum prices for board manufactured and sold under those contracts from the date of their execution until May, 1938. But the defendants deny that they have violated Sections 1, 2, and 3 of the Sherman Act, or any of such sections, by being parties to contracts in restraint of trade and commerce, or by combining and conspiring to restrain trade and commerce, or by attempting to monopolize and monopolizing trade and commerce in gypsum board, plaster, and miscellaneous gypsum products, or in any manner charged in the complaint, or at all. They deny the allegations of paragraph 46 of the complaint to the effect that the license agreements were entered into by concerted action to give color of legality to the combination and that they were not bona fide license agreements, reasonably designed to give to USG the pecuniary reward for valid patent monopolies; they assert that on the contrary the license agreements were bona fide in both law and fact and were reasonably designed to secure to USG the pecuniary reward to which it was entitled for its valid patent monopolies. The defendants admit the setting up by USG in 1932 of the Board Survey Company as a wholly owned corporation whose function was to bring about compliance with the licenses, but they assert that the licensees had no part in the formation, management, or operation of this company. The defendants admit that from time to time the licensor met with the licensees for the purpose of explaining the provisions of the minimum price bulletins with respect to patented gypsum board and securing adherence to the minimum prices by the licensees; but they assert that all discussion at these meetings was limited to patented gypsum board, that the prices of plaster or unpatented products were never discussed, and that there was never any agreement reached among those in attendance as to what should or should not be done as to a particular matter. The defendants deny that any side agreements were entered into. The denials of the defendants with respect to monopoly do not include a denial that within the group of defendants there

is manufactured and sold substantially all of the gypsum board produced and sold in the "Eastern area." The contention of the defendants in this respect is that to the extent that they have a "monopoly" upon the production and sale of gypsum board, the same is legitimatized by the patent license agreements. The defendants deny that the license agreements and the operations thereunder were applied to unpatented plaster and miscellaneous gypsum products, to purchased board, to standardization of products to the elimination of jobbers and non-conforming wholesalers, or to the fixing of resale prices of manufacturing distributors.

The answers will be further detailed as is necessary in the discussion to follow.

The instant proceeding was filed on August 15, 1940.[16] A three-judge court was constituted on September 15, 1942. Preliminary to trial the Government propounded to the defendants 361 interrogatories,[17] to many of which 8734 objections were filed. Hearings were had and rulings made on these objections. Thereafter the defendants, by virtue of amended answers containing pleas of *res judicata* based upon a disposition favorable to the defendants therein of the criminal case first described in the margin, filed motions for summary judgment. These motions were argued orally and briefs were submitted, and the motions were denied on August 10, 1943 (51 F. Supp. 613). Thereafter, the defendants moved to strike, or alternatively for partial judgment dismissing, paragraph 46 (*a*) of the Government's complaint as amended, which paragraph presented an issue as to the validity of certain

16 There have been two previous related proceedings. These were criminal indictments, both returned on June 28, 1940. One, *United States* v. *United States Gypsum Co., et al.*, No. 66008, in the District Court of the United States for the District of Columbia, charged USG, National, Certain-teed, Ebsary, Newark, and numerous officers and employees of these companies and of The American Gypsum Company (acquired by Celotex), with conspiring illegally to fix prices on gypsum board and to eliminate jobbers from the gypsum board industry; the other indictment, *United States* v. *Certain-teed Products Corp., et al.*, No. 66007, in the District Court of the United States for the District of Columbia, charged USG and Certain-teed with a conspiracy illegally to fix prices on perforated gypsum lath. The criminal case first described came on for trial in the fall of 1941, and on November 19, 1941, at the conclusion of the Government's case, a verdict was directed in favor of the defendants. A nolle prosequi was filed in the second case on September 17, 1942.

17 Fifty-one interrogatories were served upon USG, Avery, and Knode; 53 upon National and Baker; 56 upon Certain-teed and Hartley; 42 upon Celotex and Dahlberg; 53 upon Ebsary and Frederick G. Ebsary; 59 upon Newark and Tomkins; 47 upon Texas.

of the patents upon which the November 1929 license agreements were based. These motions were orally argued and briefs were submitted upon them, and an order was entered on November 15, 1943 (53 F. Supp. 889), dismissing all of the Government's claim contained in paragraph 46 (a) except the first and last sentences thereof.

The instant case came on for trial on November 15, 1943, and continued, with some intermissions, until the close of presentation of evidence by the Government on April 20, 1944. The testimony of 28 witnesses was heard and 641 exhibits, mostly of a documentary character, were received in evidence. Much of the testimony and most of the exhibits (448) were received in evidence subject to connection; 86 exhibits were offered but rejected. The record comprises since the commencement of the actual trial 7585 pages, exclusive of the exhibits. The latter comprise several thousand additional pages. At the close of the Government's case the defendants moved to strike from the record all of the exhibits and testimony received subject to connection, on the ground that no *prima facie* showing of any conspiracy had been made, that such exhibits and testimony had not been shown to be in furtherance or in execution of any conspiracy, and that such exhibits had not otherwise been connected. The defendants moved also to dismiss the complaint with prejudice under Rule 41 (b) of the Federal Rules of Civil Procedure on the ground that upon the facts and the law the plaintiff had shown no right to relief. Briefs were submitted in advance of oral argument in support of and in opposition to the motions. After oral argument the motions were submitted and taken under advisement on May 29, 1944. On June 6, 1944, additional briefs were filed, and on January 17, 1945, the court requested further briefs. The last of these was filed on March 14, 1945.

We proceed to discussion of the several questions of law and fact raised by the motions.

I

The Duty of the Court on Motions to Dismiss Under Rule 41 (b) of the Federal Rules of Civil Procedure

At the threshold there must be discussed the question of the duty of the court on motions to dismiss under Rule 41 (b). The rule provides, so far as here pertinent:

> * * * After the plaintiff has completed the presentation of his evidence, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that *upon the facts and the law* the plaintiff has shown no right to relief. Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction or for improper venue, operates as an adjudication upon the merits. [Italics supplied]

The defendants assert that under this rule it is the duty of the court to weigh the evidence, to draw inferences therefrom, and, if it finds the evidence insufficient to make out a case for the plaintiff, to render a decision for the defendant on the merits and make findings of fact and conclusions of law. To the contrary, the Government contends that "The sole question presented to the trial judge by such a motion is one of law, namely, whether the plaintiff's evidence and all the inferences fairly to be drawn from it, considered in the most favorable light, make out a prima facie case for relief. * * *"[18] This contention is, in effect, that the court should conduct itself under a motion to dismiss under Rule 41 (b) as would a court in a jury trial on a defendant's motion for a directed verdict at the close of the plaintiff's case. We think that this is not correct, but that the duty of the court is that asserted by the defendant as above stated.

The so-called *prima facie* case rule governing the action of judges in jury trials rests upon the established division of functions, in such proceedings, between jury and judge, whereby the jury tries the facts and the judge determines the law. The judge, before verdict, has no function as to the facts except in the limited sense of determining whether there is "a case for the jury." If there is substantial proof

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18 The Government's contention is phrased in the language of *Schad* v. *Twentieth Century-Fox Film Corp.*, 136 F. (2d) 991, 993 (C. C. A. 3d, 1943). This case is discussed below.

of the elements of the plaintiff's charge, the case must go to the jury, even if the judge, if he were the trier of the facts, would himself decide the case against the plaintiff. Putting it otherwise, a judge in a jury trial does not withdraw a case from the jury on a defendant's motion at the end of the plaintiff's case unless the judge can fairly say that no reasonable juryman could find for the plaintiff. *Pennsylvania R. Co.* v. *Chamberlain,* 288 U.S. 333 (1933); *Gunning* v. *Cooley,* 281 U.S. 90 (1930); *Baltimore & Ohio R. Co.* v. *Groeger,* 266 U. S. 521 (1925); *Slocum* v. *New York Life Ins. Co.,* 228 U.S. 364 (1913);
8736 *Jackson* v. *Capital Transit Co.,* 69 App. D.C. 147, 99 F. (2d) 380 (1938), *cert. denied,* 306 U.S. 630 (1939); *Hopkins* v. *Baltimore & Ohio R. Co.,* 65 App. D.C. 167, 81 F. (2d) 894 (1936).

But in an action tried without a jury the judge is the trier of both the facts and the law. This fundamental distinction between jury and non-jury trials should not be ignored; and if the reason for the jury trial practice does not exist in non-jury trials, where the judge is the trier of the facts, the jury trial practice ought not to be applied but should give way in favor of a practice consistent with the actual function of the judge in non-jury cases and consistent with the spirit of the Federal Rules of Civil Procedure. Rule 1 expressly provides that the rules "shall be construed to secure the just, speedy, and inexpensive determination of every action." Therefore, a court should dispose of a case at the first opportunity which is appropriate under the rules and in accord with the rights of the parties. When a court sitting without a jury has heard all of the plaintiff's evidence, it is appropriate that the court shall then determine whether or not the plaintiff has convincingly shown a right to relief. It is not reasonable to require a judge, on motion to dismiss under Rule 41 (b), to determine merely whether there is a *prima facie* case, such as in a jury trial should go to the jury, when there is no jury—to determine merely whether there is a *prima facie* case sufficient for the consideration of a trier of the facts *when he is himself the trier of the facts.* To apply the jury trial practice in non-jury proceedings would be to erect a requirement compelling a defendant to put on his case and the court to spend the time and incur the public expense of hearing it if the plaintiff had, ac-

cording to jury trial concepts, made "a case for the jury," even though the judge had concluded that on the whole of the plaintiff's evidence the plaintiff ought not to prevail. A plaintiff who has had full opportunity to put on his own case and has failed to convince the judge, as trier of the facts, of a right to relief, has no legal right under the due process clause of the Constitution to hear the defendant's case, or to compel the court to hear it, merely because the plaintiff's case is a *prima facie* one in the jury trial sense of the term. *Porter* v. *Wilson,* 239 U.S. 170 (1915). In *Lambuth* v. *Stetson & Post Mill Co.,* 14 Wash. 187, 44 Pac. 148 (1896), a lawsuit in which a jury had been waived, the defendant moved for a nonsuit and dismissal after the plaintiff had put in his evidence and rested. The motion was granted because in the view of the trial judge a fair preponderance of the proof established facts which prevented recovery by the plaintiff. On appeal the plaintiff claimed that the trial judge had no right to weigh the evidence. The Supreme Court of Washington rejected this contention and, in doing so, stated:

8737 But, where the entire trial is before the court which must finally pass upon the law and facts of the case, there is no good reason why it should not be allowed to determine the facts necessary to a proper application of the law at any time during the trial. It would be worse than useless for the court, after its attention had been called to the insufficiency of the evidence offered by the plaintiff to establish the facts necessary to enable him to recover, and after being satisfied that such was the nature of the evidence introduced by the plaintiff, to require the defendant to put in evidence to disprove that which had been already sufficiently disproved.

When the trial is before a jury, the court cannot weigh the testimony upon a motion for a non-suit, for the reason that it cannot weigh it at any time; but when the trial is without a jury, the court must eventually weigh the testimony for the purpose of determining where the preponderance is, and there is no reason why it should not so weigh it at the earliest possible time when the rights of the plaintiff will not be cut off by its so doing; and when the plaintiff has introduced all of his proof and rested, no right of his will be cut off if the court then determines what has been proven. It cannot be presumed that plaintiff's case will be strengthened by the evidence put in by

the defendant. If, when plaintiff had submitted his evidence, the defendant had rested without putting in any proof, it is clear that the court would have had to determine the question of fact made by the pleadings upon a preponderance of the testimony. Hence, under the rule contended for by the appellant, the court might be put in the anomalous position of denying the motion for a non-suit, and immediately thereafter, upon the refusal of the defendant to put in any proof, deciding the case in his favor.

No good purpose could be subserved by refusing to a trial court the right to determine the law in the light of the evidence upon a motion for a non-suit, the same as upon final submission.

It was the right of the court, upon the motion for non-suit, to decide as to the preponderance of the evidence, and it having decided that such preponderance was with the defendant, and there having been testimony to support such findings, the judgment rendered thereon must be affirmed. [14 Wash. at 190-1, 44 Pac. at 149]

The Government attacks this reasoning upon the ground that it has no application to a conspiracy case such as the instant case where, according to the Government:

> * * * most of the plaintiff's evidence * * * has to come from hostile or *quasi* hostile witnesses. In such cases the plaintiff makes no effort to put in more than a prima facie case in the first instance, recognizing that when the defendants put on their witnesses many additional facts may be brought out * * *

No proper distinction can be drawn under the Federal Rules of Civil Procedure between a plaintiff's burden in a conspiracy case and in other cases. The argument of the Government assumes that a plaintiff has some vested or due process interest in hearing the defendant's witnesses and seeing the defendant's documentary evidence, even though the plaintiff has not been able to establish his own case. This assumption has been rejected, as above pointed out, by the Supreme Court in *Porter* v. *Wilson, supra.* The argument is especially lacking in cogency in view of Rules 43 (b) and 26 to 37, inclusive, of the Federal Rules of Civil Procedure. These permit a party to call an adverse party and interrogate him by leading questions and contradict and impeach him, and also permit a party to call an officer, director, or managing agent of a public or private corporation, or of a partnership or association which is an adverse party, and cross examine and contradict and impeach him in all respects

as if he had been called by the adverse party. These rules also permit depositions pending action, interrogatories to parties, discovery and production of documents and things for inspection, copying, or photographing, and requests for admission of facts and of genuineness of documents.

These rules were availed of in the instant case. 8738 Most of the Government's evidence came either from the lips of officers or employees of the defendants, or from documents obtained from the files of the defendants.

The Notes to the Federal Rules of Civil Procedure state, concerning Rule 41 (b):

> • • • This provides for the equivalent of a nonsuit on motion by the defendant after the completion of the presentation of evidence by the plaintiff. Also, for actions tried without a jury, it provides the equivalent of the directed verdict practice for jury actions which is regulated by Rule 50.

The Government, in arguing for the "*prima facie* case" construction of the rule, emphasizes the statement that a motion to dismiss under Rule 41 (b) is "the equivalent of the directed verdict practice for jury actions which is regulated by Rule 50." But this statement carries the "equivalence" of motions under the two rules unduly far, indeed begs the question which is under discussion. Rule 50 (a) provides:

> • • • A party who moves for a directed verdict at the close of the evidence offered by an opponent may offer evidence in the event that the motion is not granted, without having reserved the right so to do and to the same extent as if the motion had not been made • • •

Motions under Rule 41 (b) and (50) (a) are similar in that a motion under either rule leaves the defendant with a right to present his own case if the decision on his motion goes against him; and the motions under the two rules are similar in that both provide a defendant with a method of mid-trial attack upon the plaintiff's case, and a means of determining whether or not the defendant must present his evidence. But beyond these likenesses, motions under Rule 41 (b) and Rule 50 (a) should be assimilated only so far as is consonant with reason and with the spirit of the Federal Rules of Civil Procedure. To say that Rule 41 (b), applying to non-jury cases, provides the equivalent in all respects of motions for a directed verdict in jury trials under Rule 50 (a) is to ignore the difference

between the functions of the judge in jury cases where the judge is not the trier of the facts and in non-jury cases where he is the trier of the facts.

The Government argues further that Rule 41 (b) should be interpreted to require only a jury trial method of viewing the evidence at the end of the plaintiff's case for the reason that as a matter of trial convenience this will save time; otherwise, urges the Government, a judge must "*twice weigh* the evidence," if (it is assumed the Government means) the defendants' motion to dismiss is denied. But this is an unavoidable incident of permitting a mid-trial motion. It is true that under the construction here put upon Rule 41 (b) the judge will have to evaluate the plaintiff's evidence, and if he concludes that it substantially supports the plaintiff's cause of action and therefore denies the motion and hears the defendant's case, the judge will then be required again to consider the plaintiff's evidence, in comparison with that of the
8739 defendant. But some such burden as this is unavoidable, even under the construction of Rule 41 (b) urged by the Government. For if at the close of the plaintiff's evidence the court on a defendant's motion to dismiss, determining merely whether there is such evidence as would warrant sending the case to a jury and finding that there is, denies the motion and puts the defendant to his proof, then at the close of the defendant's case the judge will have to weigh the plaintiff's evidence against that of the defendant; while the judge's first consideration of the plaintiff's evidence will not be technically a weighing of it, but more accurately speaking a survey, nevertheless the judge will have given consideration to the plaintiff's evidence twice.

There is no authority in this jurisdiction on the question under discussion. Elsewhere there is a division. Supporting the position taken here are the following: *Gary Theatre Co.* v. *Columbia Pictures Corp.*, 120 F. (2d) 891 (C. C. A. 7th, 1941); *Bach* v. *Friden Calculating Machine Co.*, 148 F. (2d) 407 (C. C. A. 6th, 1945); *Young* v. *United States*, 111 F. (2d) 823 (C. C. A. 9th, 1940); *cf. United States* v. *Blauner Construction Co.*, 37 F. Supp. 968 (D. Mass. 1941).

The cases relied upon by the Government to support its contention concerning Rule 41 (b) are: *Federal Deposit Ins. Corp.* v. *Mason*, 115 F. (2d) 548 (C. C. A. 3d, 1940); *Schad* v. *Twentieth Century-Fox Film Corp.*, 136 F. (2d) 991 (C. C. A. 3d, 1943); *Shaw* v. *Missouri Pac. R. Co.*, 36 F. Supp. 651 (W. D. La. 1941), 39 F. Supp. 652 (W. D. La.

1941). See also *Reich* v. *Vegex*, 137 F. (2d) 647 (C. C. A. 3d, 1943). Of these cases it is necessary to discuss only *Federal Deposit Ins. Corp.* v. *Mason and Schad* v. *Twentieth Century-Fox Film Corp.* The second of these is based in part upon the first, and the others mentioned proceed upon the same theory as do these two cases. The decision in *Federal Deposit Ins. Corp.* v. *Mason* was based solely upon the statement in the Notes to the Federal Rules of Civil Procedure that for actions tried without a jury Rule 41 (b) provides "the equivalent of the directed verdict practice for jury actions which is regulated by Rule 50." *Schad* v. *Twentieth Century-Fox Film Corp.* was based in part upon the position just expressed, but in addition upon the view that if Rule 52 (a) concerning findings of fact applies to rulings on motions to dismiss under Rule 41 (b), it does not contemplate not making findings of fact in the event that a motion is *denied*. The court concluded from this that if a judge in a non-jury proceeding is to weigh the evidence on a motion to dismiss at the close of the plaintiff's case, he must, under Rule 52 (a), in the event of the *denial* of the motion, make findings of fact in the plaintiff's favor, and this before hearing the defendant's evidence, with the consequence, the court thought, of possible denial of due process to the defendant. In both of these cases the court fails to take account of the difference between a court's function in jury proceedings and in non-jury proceed-
8740 ings. *Schad* v. *Twentieth Century-Fox Film Corp.* is, moreover, wrong in its view of the requirement of Rule 52 (a) concerning findings of fact. That rule provides, so far as here pertinent:

> • • • In all actions tried upon the facts without a jury, the court shall find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment • • •

When this is read in connection with Rule 41 (b), it is clear that findings of fact are not to be made upon *denial* of a motion to dismiss. Under Rule 41 (b) it is *dismissal*, not refusal to dismiss, that operates "as an adjudication upon the merits" and entitles a party to "entry of the appropriate judgment." If a motion to dismiss is denied, the mid-trial attack allowed the defendant has failed and the case is not complete. No final adjudication on the merits can be made, therefore, until the defendant's case has been heard and evaluated by the judge in comparison with the case of the

plaintiff. It would, therefore, be useless to make findings of fact upon *denial* of a motion to dismiss. It may be noted, however, that even if Rule 52 (a), read in connection with Rule 41 (b), be construed as requiring findings of fact upon the denial of a motion to dismiss, there could hardly be denial of due process to the defendant in the making of such findings. Findings of fact under such circumstances would be merely interlocutory. It is not to be assumed that a trial judge is incapable, after hearing a plaintiff's case and determining from it alone that the plaintiff would be entitled to prevail, of holding his mind open to hear the defendant's evidence before reaching a final determination as to the rights of the two parties. We conclude that under Rule 41 (b) it is the duty of the court to weigh the evidence, to draw inferences therefrom and, if it finds the evidence insufficient to make out a case for the plaintiff, to render a decision for the defendant on the merits.

Once this view is taken it is clear that it becomes the duty of the court, on *granting* a motion to dismiss under Rule 41 (b), to make findings of fact. Rule 52 (a) requires findings of fact and conclusions of law "In all actions tried upon the facts without a jury." Obviously, if the defendant were to rest his case at the time he made his motion to dismiss, the court on granting the motion would be under a duty to make findings. Under Rule 50 (a) the defendant is not required to rest; he has a right to offer evidence in the event his motion to dismiss is denied. But the existence of this right is not persuasive that the court is not to make findings of fact if, under the view here taken of Rule 41 (b), the defendant, without resting, moves to dismiss and the court *grants* the motion. A case has been "tried upon the facts" when the plaintiff's evidence, weighed by the judge, has been found insufficient. A dismissal under Rule 41 (b) operates "as an adjudication upon the merits." Attention is called to the fact that in three of the cases (to wit,
8741 *Gary Theatre Co.* v. *Columbia Pictures Corp.*, *United States* v. *Blauner Construction Co.*, and *Young* v. *United States*) cited above as supporting the position here taken on the duty of the court on a motion to dismiss under Rule 41 (b), findings of fact were made under Rule 52 (a) on the granting of a motion to dismiss; and in the fourth case cited (*Bach* v. *Friden Calculating Machine Co.*), where the trial court failed to make findings of fact, the Circuit Court of Appeals required them to be made. The argument of the Government against making findings of fact hangs from its view, which we here reject, that on a motion

to dismiss under Rule 41 (b) the court does not weigh the evidence but merely follows the jury trial practice of determining whether or not a *prima facie* case has been established. There would, of course, be little point in making findings of fact on the decision of the mere "question of law" whether a plaintiff, if his evidence and legitimate inferences to be drawn therefrom are looked at in the most favorable light, has made a case sufficient to present to a jury if the proceeding were a jury proceeding.

If the court decides on a motion to dismiss under Rule 41 (b) that upon the facts and the law the plaintiff has shown no right to relief, conclusions of law, as well as findings of fact, must be made under Rule 52 (a), and the court must direct the entry of the appropriate judgment, *i.e.*, a judgment of dismissal on the merits.

We proceed to consider and weigh the evidence, pausing first, however, to determine a paramount question of law.

II

The Legality of the License Agreements

Are the patent license contracts described in the statement of facts at the outset of this opinion lawful: This question is to be answered in the light of the nature of the principal patents upon which the agreements were founded (the Utzman, Roos and Haggerty patents), in the light of the fact that the defendants make and sell substantially all of the gypsum board in the "Eastern area," and in the light of the terms and conditions of the license agreements, including especially the provisions for establishment and protection by USG of minimum prices on patented gypsum board manufactured and sold by the licensees. This question must be answered in the affirmative if no material distinction exists between the instant case and *United States* v. *General Electric Company*, 272 U. S. 476 (1926).

For purposes of comparison reference to the *General Electric* case must be made at some length. The case presented two questions. The first involved the legality under the Sherman Act of a system of distribution adopted by the General Electric Company (hereinafter referred to as General Electric) and used by the Westinghouse Electric and Manufacturing Company and the Westinghouse Lamp Company (both hereinafter referred to as Westinghouse, the Lamp Company being a wholly owned subsidiary and selling agent of the Electric and Manufacturing Com-

8742 pany), whereby electric lamps were distributed direct to the consumer through a complex del credere agency arrangement. It was charged that this system of distribution was merely a device to enable General Electric to fix the resale price of lamps in the hands of purchasers—which it was asserted the "agents" were in fact. This first question did not turn on the rights of a patent owner, but some consideration of it is necessary to an understanding of the second question. The latter involved the validity under the Sherman Act of a license granted March 1, 1912, by General Electric to Westinghouse to make, use and sell lamps under patents owned by General Electric. It was charged that the license provided that Westinghouse would, with regard to lamps manufactured by it under the license, follow the prices and maintain the terms and conditions of sale observed by General Electric in the distribution of lamps which it made.

Prior to 1912 in a suit between the United States and the three defendants in the *General Electric* case and thirty-two other corporations, a consent decree was entered dissolving, as illegal, a combination charged with restraint of interstate commerce in electric lamps, and enjoining fixing of resale prices for purchasers, but permitting the owner of patents to fix the prices as which a licensee should sell lamps. In 1912, after the consent decree, a new plan was evolved by General Electric whereby through a comprehensive system lamps were distributed directly to the consumer. Recognizing that the plan was devised to enable General Electric "to deal directly with consumers and purchasers, and * * * to avoid selling the lamps owned by the [General Electric] company to jobbers or dealers, and prevent sale by these middle men to consumers at different and competing prices," the Court said that the question (in this first aspect of the case) is "whether, in view of the arrangements made by the company with those who ordinarily and usually would be merchants buying from the manufacturer and selling to the public,—such persons are to be treated as agents, or as owners of the lamps consigned to them under such contracts." (272 U. S. at 483-4) The Court reviewed the provisions of the contracts for distribution and held they were bona fide agency agreements and that they involved no sale to the agents and hence no resale price fixing. That the decision in this aspect of the case did not turn upon the fact that a patented article was involved was made clear by the statement of the Court that

"there is nothing as a matter of principle, or in the authorities, which requires us to hold that genuine contracts of agency like those before us, however comprehensive as a mass or whole in their effect, are violations of the Anti-Trust Act. The owner of an article, patented or otherwise, is not violating the common law, or the Anti-Trust law, by seeking to dispose of his article directly to the consumer and fixing the price by which his agents transfer the title from him directly to such consumer." (272 U. S. at 488)

8743 The second question in the case arose out of the following facts. General Electric was the owner of three patents, the Just & Hanaman "basic" patent of 1912 for the use of tungsten filaments in the manufacture of electric lamps, the Coolidge patent of 1913 covering a process of manufacturing tungsten filaments by which their tensile strength and endurance were increased, and the Langmuir patent of 1916 for the use of gas in electric lamp bulbs to increase the intensity of the light. These three patents, so the Court stated, "cover completely the making of the modern electric lights with the tungsten filaments, and secure to the [General] Electric Company the monopoly of their making, using and vending." (272 U. S. at 481) The nature of these patents and their relation to the art are detailed later in this topic. The license, founded upon the foregoing patents (and others), granted by General Electric to Westinghouse on March 1, 1912, gave Westinghouse, in consideration of royalties to be paid, the right to manufacture, use and sell electric lamps having tungsten filaments, and contained certain restrictive provisions as to the prices, terms and conditions under which Westinghouse might sell the product made under the license. The detailed provisions of the license will also be discussed below. Additional licenses of non price fixing character but containing quantity restrictions were granted to persons other than Westinghouse; these licenses will be adverted to below. The Government contended that the license to Westinghouse not only obligated that company to follow the prices, terms and conditions of sale to be fixed from time to time by General Electric and observed by it, but also required Westinghouse to adopt the General Electric agency distribution plan. Westinghouse had, as a matter of fact, adopted the agency plan of distribution and had followed the same restrictions in the case of its own agents as those prescribed by General Electric, but it contended that it was not required to do so. The Court considered this point of

dispute immaterial, saying: "It does not appear that this provision was express in the license, because no such plan was set out therein; but even if the construction urged by the Government is correct, we think the result must be the same." (272 U. S. at 489)

By unanimous decision the Court sustained the validity of the General Electric-Westinghouse license. It held that the restrictive provisions were not violative of the Sherman Act. In reaching this conclusion, the Court analyzed the rights of the owner of a patent, recognized that a patentee's right to acquire a profit by the price at which the product is sold is a substantive right, and held that the terms and conditions contained in the license were such as were reasonably adapted to secure to the owner of the patent the pecuniary reward to which he is entitled. The Court necessarily passed upon the validity of the restrictions in
8744 the license because they were a part of the license contract which was before the Court.[19] Further reference to the license agreement is made later. In discussing the rights of a patent owner, the Court said:

> The owner of a patent may assign it to another and convey, (1) the exclusive right to make, use and vend the invention throughout the United States, or, (2) an undivided part or share of that exclusive right, or (3) the exclusive right under the patent within and through a specific part of the United States. But any assignment or transfer short of one of these is a license, giving the licensee no title in the patent and no right to sue at law in his own name for an infringement. *Waterman* v. *Mackenzie,* 138 U. S. 252, 255; *Gayler* v. *Wilder,* 10 How. 477, 494, 495; *Moore* v. *Marsh,* 7 Wall. 515, and *Crown Company* v. *Nye Tool Works,* 261 U. S. 24, 30. *Conveying less than title to the patent, or part of it, the patentee may grant a license to make, use and vend articles under the specifications of his patent for any royalty or upon any condition the performance of which is reasonably within the reward which the patentee by the grant of the patent is entitled to secure.* It is well settled, as already said, that where a patentee makes the patented article and sells it, he can exercise no future control over what the purchaser may wish to do with the article after his purchase. It has passed beyond the scope of the patentee's rights. *Adams* v. *Burke,* 17 Wall. 453; *Bloomer* v. *McQuewan,* 14

19 The license agreement was Exhibit A to a stipulation of facts upon which the case was submitted.

How. 539; *Mitchell* v. *Hawley*, 16 Wall. 544; *Hobbie* v. *Jennison*, 149 U. S. 355; *Keeler* v. *Standard Folding Bed Co.*, 157 U. S. 659. But the question is a different one which arises when we consider what a patentee who grants a license to one to make and vend the patented article may do in limiting the licensee in the exercise of the right to sell. The patentee may make and grant a license to another to make and use the patented articles, but withhold his right to sell them. The licensee in such a case acquires an interest in the articles made. He owns the material of them and may use them. But if he sells them, he infringes the right of the patentee, and may be held for damages and enjoined. *If the patentee goes further, and licenses the selling of the articles, may he limit the selling by limiting the method of sale and the price? We think he may do so, provided the conditions of sale are normally and reasonably adapted to secure pecuniary reward for the patentee's monopoly. One of the valuable elements of the exclusive right of a patentee is to acquire profit by the price at which the article is sold. The higher the price, the greater the profit, unless it is prohibitory. When the patentee licenses another to make and vend, and retains the right to continue to make and vend on his own account, the price at which his licensee will sell will necessarily affect the price at which he can sell his own patented goods. It would seem entirely reasonable that he should say to the licensee, "Yes, you may make and sell articles under my patent, but not so as to destroy the profit that I wish to obtain by making them and selling them myself."* He does not thereby sell outright to the licensee the articles the latter may make and sell, or vest absolute ownership in them. He restricts the property and interest the licensee has in the goods he makes and proposes to sell.

This question was considered by this Court in the case of *Bement* v. *National Harrow Company*, 186 U. S. 70. A combination of manufacturers owning a patent to make float spring tool harrows, licensed others to make and sell the products under the patent, on condition that they would not during the continuance of the license sell the products *at a less price, or on more favorable terms of payment and delivery to purchasers*, than were set forth in a schedule made part of the license. That was held to be a valid use of the patent rights of the owners of the patent. It was objected that this made for a monopoly. The Court, speaking by Mr. Justice Peckham, said (p. 91):

"The very object of these laws is monopoly, and the rule is, with few exceptions, that *any conditions which are not in their very nature illegal with regard to this kind of property, imposed by the patentee and agreed to by the licensee for the right to manufacture or use or sell the article, will be upheld by the courts. The fact that the conditions in the contracts keep up the monopoly or fix prices does not render them illegal.*"

Speaking of the contract, he said (p. 93);

"*The provision in regard to the price at which the licensee would sell the article manufactured under the license was also an appropriate and reasonable condition. It tended to keep up the price of the implements manufactured and sold, but that was only recognizing the nature of the property dealt in, and providing for its value so far as possible. This the parties were legally entitled to do. The owner of a patented article can, of course, charge such price as he may choose, and the owner of a patent may assign it or sell the right to manufacture and sell the article patented upon the condition that the assignee shall charge a certain amount for such article.*"

8745 The question which the Court had before it in that case came to it on a writ of error to the Court of Appeals of New York, and raised the federal issue whether a contract of license of this kind, having a wide operation in the sales of the harrows, was invalid because a violation of the Anti-Trust law. This Court held that it was not. [Italics supplied] [272 U. S. at 489-491]

The Court in the *General Electric* case held that *Bement* v. *National Harrow Company*, 186 U. S. 70 (1902), had not been overruled by *Motion Picture Patents Co.* v. *Universal Film Co.*, 243 U. S. 502 (1917), in which it had held that the owner of a patented machine could not grant a license for its use conditioned upon the use in it of certain unpatented products.

The Court distinguished certain cases in which it had ruled that restrictions as to price of patented articles were invalid (*Boston Store* v. *American Graphophone Co.*, 246 U. S. 8 (1918); *Straus* v. *Victor Talking Machine Co.*, 243 U. S. 490 (1917); *Bauer* v. *O'Donnell*, 229 U. S. 1 (1913); *Standard Sanitary Mfg. Co.* v. *United States*, 226 U. S. 20 (1912); *Bobbs-Merrill Co.* v. *Straus*, 210 U. S. 339 (1908)), holding that those cases were but "instances of the application of the principle of *Adams* v. *Burke*, 17 Wall. 453, 456 . . . that a patentee may not attach to the article made by

him, or with his consent, a condition running with the article in the hands of purchasers, limiting the price at which one who becomes its owner for full consideration shall part with it." (272 U. S. at 493-4) The Court said that these cases "do not consider or condemn a restriction put by a patentee upon his licensee as to the prices at which the latter shall sell articles which he makes and only can make legally under the license." (272 U. S. at 494)

The right of a patent owner to control the terms and conditions including the minimum price under which a licensee may make and sell the patented product as established in the *Bement* and *General Electric* cases has not been denied or qualified in later cases. On the contrary, the later cases reaffirm that right. In *Carbice Corp.* v. *American Patents Development Corp.*, 283 U. S. 27 (1931), holding that a patent licensor cannot exact as a condition of a license that unpatented materials used in connection with the invention (a manufacture) shall be purchased from the licensor, the Supreme Court nevertheless recognized that a patent owner "can grant licenses upon terms consistent with the limited scope of the patent monopoly, *United States* v. *General Electric Co.*, 272 U. S. 476, 489." (283 U. S. at 31) In *General Talking Pictures Co.* v. *Western Electric Co.*, 304 U. S. 175 (1938), *on rehearing*, 305 U. S. 124 (1938), *further rehearing denied*, 305 U. S. 675 (1939), the Court upheld a license to manufacture amplifiers under the licensee's patent where the license was "to manufacture • • •, and to sell only for radio amateur reception, radio experimental reception and radio broadcast reception" (305 U. S. at 126), and held that sales by such a licensee for 8746 use in the commercial field constituted an infringement, i.e., a violation of the license. In holding that this restriction was valid, the Court said: "That a restrictive license is legal seems clear. *Mitchell* v. *Hawley*, 16 Wall. 544. As was said in *United States* v. *General Electric Co.*, 272 U. S. 476, 489, the patentee may grant a license 'upon any condition the performance of which is reasonably within the reward which the patentee by the grant of the patent is entitled to secure.' The restriction here imposed is of that character." (305 U. S. at 127) This was upon rehearing. In the opinion written when the case was first heard, the Court said: "Unquestionably, the owner of a patent may grant licenses to manufacture, use or sell upon conditions not inconsistent with the scope of the monopoly." (304 U. S. at 181) In *Interstate Circuit* v. *United States*, 306

U. S. 208 (1939), the Court held that certain restrictions in motion picture distributors' licenses to exhibitors exceeded the scope of a copyright monopoly, but, expressly referring to the *Bement* and *General Electric* cases, recognized that "a patentee has power to control the price at which his licensee may sell the patented article * * * ." (306 U. S. at 228) In *Ethyl Gasoline Corp.* v. *United States*, 309 U. S. 436 (1940), wherein control of jobbers' resale prices was held illegal, a provision in patent licenses whereby licensee refining companies were required to sell the patented product—Ethyl gasoline—"at a certain fixed price differential above the average net sales price of the licensees' best non-premium grade of commercial gasoline" (309 U. S. at 448), was not questioned; and the *General Electric* case was referred to and its principle recognized. In *United States* v. *Masonite Corp.*, 316 U. S. 265 (1942), *rehearing denied*, 316 U. S. 713 (1942), the Court disapproved an "agency" arrangement set up in the "hardboard" industry, but said that the case did not present "any question as to the validity of a license to manufacture and sell, since none of the 'agents' exercised its option to acquire such a license from Masonite. Hence we need not reach the problems presented by *Bement* v. *National Harrow Co.*, 186 U. S. 70, and that part of the *General Electric* case which dealt with the license to Westinghouse Company." (316 U. S. at 277) In *United States* v. *Univis Lens Co.*, 316 U. S. 241 (1942), the Court held that fixing the price of a patented article beyond the first sale constituted an improper extension of the scope of the patent monopoly, but said that in this view of the case there was no occasion for reconsideration of the *General Electric* case, and the Court in no way rejected the proposition announced by the lower court in *United States* v. *Univis Lens Co.*, 41 F. Supp. 258 (S. D. N. Y. 1941): "Nor does the owner of a patent violate the Sherman Anti-Trust Law by fixing prices in license agreements under which articles may be manufactured and sold by the licensees. United States v. General Electric Co., 272 U. S. 476 * * * ; E. Bement & Sons v. National Harrow Co., 8747 supra * * * ." (41 F. Supp. at 264) In *Mercoid Corp.* v. *Mid-Continent Investment Co.*, 320 U. S. 661 (1944), *rehearing denied*, 321 U. S. 802 (1944), and *Mercoid Corp.* v. *Minneapolis-Honeywell Regulator Co.*, 320 U. S. 680 (1944), *rehearing denied*, 321 U. S. 802 (1944), cases dealing with combination patents covering installed heating systems, which neither the patent owner nor the licensees manufactured or installed, the Court held that the patent

monopoly could not be extended to include the imposition of otherwise illegal restrictions on the sale of unpatented stoker switches used in the heating system, but the Court in no way discountenanced the *Bement* and *General Electric* cases. The *Mercoid* cases are referred to again below.

The *General Electric* case has been stated above in broad outline, and from the facts and questions presented in the case and the decision thereon and the language quoted from the opinion, it is seen that the primary propositions for which the case stands are that a patentee may divide his monopoly by licensing the right to make, use and vend the patented product, and that he may fix the terms and conditions, including the price, under which the patented product shall be sold, subject only to the limitation that such terms and conditions do not yield to the patentee more than the normal and reasonable reward of a patent monopoly. Additional propositions for which the case stands, corollary to these primary propositions, will be stated later.

The problem presented in such cases as the *General Electric* case and the instant case is that of determining whether or not the monopoly accorded to an inventor under the patent laws has been extended beyond its proper operation under those laws and into the field denounced by the Sherman Act. The patent laws and the Sherman Act exist side by side, each being entitled to full recognition and application by the courts.[20] The nature of a patent monopoly
8748 and of the rights thereunder and the relationship of a patent monopoly to the Sherman Act were discussed

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20 In a Senate debate preceding the enactment of the Sherman Act, Senator Sherman, its proponent, stated:

"* * * It is the unlawful combination, tested by the rules of common law and human experience, that is aimed at by this bill, and not the lawful and useful combination. Unlawful combinations made by individuals are declared by the several states to be against public policy and void, and in proper cases they may be punished as criminals. If their business is lawful they can combine in any way and enjoy the advantage of their united skill and capital, provided they do not combine to prevent competition. A limited monopoly secured by a patent right is an admitted exception, for this is the only way by which an inventor can be paid for his invention." (21 Cong. Rec. 2457 (1890))

The use of the term "limited monopoly" by Senator Sherman makes it pertinent to comment that there is a distinction between a patent monopoly and other monopolies granted by the Government. A patent to land, either upon purchase from the Government or by virtue of satisfaction of the homestead or mining laws, grants to the patentee a right to land upon which, prior to the issuance of the patent, the applicant had no claim; on the contrary, it was wholly owned by the Government in trust for the people; such a patent moreover grants the land in perpetuity. A patent monopoly is not only limited in time to seventeen years but also it grants nothing that either the Government or anyone else has theretofore owned or possessed. It is the applicant's invention or discovery—as a result of his own energy and of his ingenuity beyond

in an illuminating manner in *United States* v. *Motion Picture Patents Co.*, 225 Fed. 800 (E. D. Pa. 1915), *appeal dismissed* per stipulation of counsel, 247 U. S. 524 (1918), hereinafter referred to as the *Motion Picture Patents* case. That case was not cited in the *General Electric* case, but it has been cited, and with approval, more recently by the Supreme Court. *Standard Oil Co.* v. *United States*, 283 U. S. 163, 174 (1931); *cf. Hartford-Empire Co.* v. *United States*, 323 U. S. 386, 415 (1945), *rehearing denied*, 324 U. S. 888 (1945). In the *Motion Picture Patents* case motion picture producers and importers, some of whom had patents upon articles such as positive films, cameras and projecting machines, formed a combination. They created a board to censor films, established exchanges and refused to sell films to operators of theaters who did not belong to the exchanges and who did not pay royalties on their machines to the combination, regardless of when or from whom the machines were purchased. It was attempted to justify the restrictions as a protection of the patent rights of the parties to the combination. The court held that the combination was invalid as a violation of the Sherman Act for the reason that the regulations imposed did not bear a normal relation to the protection of patent rights, but were on the contrary intended to accomplish the imposition upon the trade of undue and unreasonable restraints with the direct result of monopolizing trade in all the accessories of the motion picture art, and the further end, largely achieved, of dom-

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the ordinary skill of the art—of "any new and useful art, machine, manufacture, or composition of matter, or any new and useful improvement thereof" (Rev. Stat. §4886 (1875), as amended, 35 U. S. C. §31 (1940)) which is the basis for the issuance of a patent. An inventor is under no legal obligation to disclose or to use the fruit of his thought and labor. The patent laws, upon the theory that the public will benefit by disclosure and use of inventions, offer him, in consideration of disclosure, an exclusive right to make, use and vend for a period of seventeen years. It is true, as stated by Mr. Justice Story in *Pennock & Sellers* v. *Dialogue*, 2 Pet. 1 (U. S. 1829), that the promotion of the progress of science and the useful arts is the main objective of the patent laws and that the reward of inventors is secondary and merely a means to that end. It is true, also, as said by Mr. Justice Daniel in *Kendall* v. *Winsor*, 21 How. 322, 329 (U. S. 1858), that "Whilst the remuneration of genius and useful ingenuity is a duty incumbent upon the public, the rights and welfare of the community must be fairly dealt with and effectually guarded. Considerations of individual emolument can never be permitted to operate to the injury of these." And it is true, as said in *United States* v. *Masonite Corp.*, *supra*, that this must be the point of departure for decision on the facts of antitrust cases involving patents "lest the limited patent privilege be enlarged by private agreements so as to by-pass the Sherman Act." (316 U. S. at 278.) But these statements do not narrow the ruling in the *General Electric* case. They but put in other words the limitation expressed in that case—that the terms and conditions of a patent license are not to yield to the patentee more than the normal and reasonable reward of a patent monopoly.

inating the motion picture business itself. District Judge Dickinson, who wrote the opinion, pointed out that the right to make, use and vend the subject matter of a patent is the natural right of an inventor and that what the patent law does is to withhold for a limited period of time
8749 from all others than the patentee or his assigns, the right to make, use or vend the patented article; he pointed out also that *the monopoly recognized by the patent law is not the monopoly condemned by the Sherman Act.* He said: "To hold otherwise would clearly be * * * a logical absurdity, because *there can be no such thing as restraint in a trade which has no existence, and a monopoly created by law, in pursuance of a policy of the law, cannot be said to result from such restraint.* To transfer a phrase from the opinion of Judge Cochran, in Patterson v. United States [222 Fed. 599, 620 (C. C. A. 6th, 1915), *cert. denied,* 238 U. S. 635 (1915)], which was directed to something else, but which is applicable here: 'There can be no monopolizing in the legal and accurate sense of the word where there can be no common occupation.'" (Italics supplied) (225 Fed. at 804-5) Judge Dickinson said also:

> We have, therefore, to determine the limits of a right and a wrong which seem to overlap each other. It is the right of a patentee, through having the exclusive sale of the patented article, to control, and in that sense, to monopolize, the trade in it. It is wrong by any illegal restraint of trade to monopolize it, or any part of it. On the one hand, it cannot have been intended to make it unlawful to acquire that the right to which the law has conferred. On the other hand (as already observed), it cannot be that the grant of a patent right confers a license to do that which the law condemns.
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> *The solution of the problem is to be sought by finding the special field of operation of each of these laws.* There is a field of trade, the sole occupancy of which may be in a patentee. Here he is supreme, and the keeper of the gate of entrance. There is another field which is in the common occupancy of all. Where the law has given the whole field to a patentee, with the express right of exclusion of others, and the use of the power of the law to enforce the exclusion, it is unthinkable that such exclusion is an illegal restraint of trade. Where the field, however, is open to all, competition for trade is likened to a race in which all may enter, but in which there must be no unfair jostling or hampering of others. Each one is free to exert all his powers, and

distance, if he can, all competitors, and win all the prizes; but he must run fairly and accord to others a like freedom. If he possesses a patented device which will aid him in the race, he may use it, as he may use any other form of property; but he must put it only to its proper use, and if he uses it as a weapon to disable a rival contestant, or to drive him from the field, he cannot justify such use, because of his patent right, except to the extent of protecting his exclusive right. *We have, therefore, the principle, which is recognized in all the cases, that if the subject-matter of a contract, which otherwise would be illegal because of restraint of trade, is a patented article, this takes away the illegality only to the extent to which the field of the trade, controlled through the combination, is coextensive with the field within which exclusive control has been granted by the law.* This is the doctrine of Henry v. Dick, 224 U. S. 1, 32 Sup. Ct. 364, 56 L. Ed. 645, Ann. Cas. 1913D, 880, Bement v. Harrow Co., 186 U. S. 70, 22 Sup. Ct. 747, 46 L. Ed. 1058, the Bath Tub case, 226 U. S. 20, 33 Sup. Ct. 9, 57 L. Ed. 107, and all the other kindred cases to which we have been referred.[21]

The difference between this private field and the common field of trade is, as a distinction, sufficiently clear; but there may be again an overlapping. The owner of a patented article has the right to enter upon this common field of trade. *His patented article may be so superior, or of such less cost than anything else upon the market, as to supplant all others and give to him the whole trade as effectually as if his patented article has originally had the field to itself. Indeed, its ownership may be sought, for the reason that it has this possibility of power.* Again, the patent may apply to only certain features of the article of trade, and yet enable the owner to reap the same advantage, and control a trade in what is beyond the exclusive rights given by the patent. The special circumstances affecting a particular contract or combination may make the principle difficult of application, and the line of legality

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21 *Henry* v. *Dick* was overruled in *Motion Picture Patents Co.* v. *Universal Co.*, *supra*, upon the ground that the grant of a patent to a machine is of the exclusive right to use the mechanism and produce the result with any appropriate material, but that such material is no part of the patented machine or of the combination which produces the patented result, and that therefore the owner of the patent cannot restrict use of the machine to material supplied by him. In the *General Electric* case the Court stated that "The overruling of the *Dick* case and the disapproval of the *Button-Fastener* case by the *Motion Picture Film* case did not carry with it the overruling of *Bement* v. *Harrow Company*." (272 U. S. at 493.)

or illegality hard to draw; but the principle remains the same. *The legality of such a contract is determined by the judgment of whether, in its whole scope and legal intendment, it is fairly limited in its operation to the proper field of trade belonging to the patentee, and whether any further advantages which flow to him are fairly incidental, and are not the evil fruit of unfair practices employed to restrain the right of others to a share of the common trade. It is the legal intendment of the contract or combination which is to be found.* The motives of the contracting parties, whether innocent or otherwise, do not determine the real character of their act; but it is determined through the judgment of the law. Motives and intentions, except as declared, or appearing from the character of the act, are too vague and difficult of ascertainment to be made the basis of the legal judgment called for in such cases. A conspiracy under this statute, as at common law, may have, as an element, the seeking of an unlawful end, or the employment of unlawful means.

We learn from the opinion of the Keystone Watch Case Co. Case that *the prohibited restraint of trade, beside being undue and unreasonable, must be the direct, and not a merely incidental, result of the contract or combination, before the latter will be condemned as illegal. If it is asked to be condemned, not because of the illegality of the means employed to accomplish its end, but because monopoly results as a consequence, the monopoly must be shown to be an unlawful monopoly, not the monopoly granted by the patent laws. A contract or agreement among business men, which had as its end to preserve to the owners of a patent the exclusive sale of the patented article, and as its means the exercise of due, reasonable, and fairly proper control over sales to be made, would not be condemned as void in itself, or justify any inference of guilt under the act of 1890.* Where, however, by what was agreed to be done, the end indicated, in the sense of the result to be expected, was a monopolistic control of what was not the exclusive property of any one, or such a monopoly was the direct result of undue and unreasonable restraints of trade, to be employed as the means of carrying out what was to be done, the fact that anyone or more of the persons concerned owned patents would not prevent a finding of conspiracy. [Italics supplied.] [225 Fed. at 805-7].

In the *Bement, General Electric* and *Motion Picture Patents* cases are found the principles and propositions which must be applied in cases such as the instant case,

i.e., in cases where it is charged that patent license agreements and operations thereunder violate the Sherman Act.

The Government, however, urges that the *General Electric* case and the instant case are distinguishable. It is said first that in the *General Electric* case the patents completely covered the incandescent lamp, whereas in the instant case they do not completely cover the patented product. Second, it is asserted that in the *General Electric* case the licensing, so far as price fixing restrictions are concerned, extended only to Westinghouse, a single competitor of General Electric, and that the percentage of manufacturing and sale of patented electric lamps controlled by General Electric and Westinghouse was but 85% of the total business of this type; whereas, in the instant case, the licensing, all of which involved price fixing, extends to six competitors, and the licensor and licensees manufacture and sell 100% of the patented product in the "Eastern area." Third, it is contended that in the *General Electric* case the terms and conditions of the patent license related only to price fixing and were not unduly restrictive, whereas in the instant case the terms and conditions of the licenses go beyond mere
8751 price fixing and are unduly restrictive. In order to discuss these contentions, it is necessary somewhat further to detail the facts as shown by the opinion and by the record in the *General Electric* case. This will serve the purpose also of disclosing the corollary propositions, alluded to above, for which the *General Electric* case stands. The case was heard in the Supreme Court upon a record (of some 875 printed pages) which included a "stipulation by counsel for all parties which, together with the exhibits attached thereto and filed therewith, contains all the evidence upon which the case was tried in the District Court, and the said exhibits attached to said stipulation." (Record, *United States* v. *General Electric Company, et al.*, No. 113, Supreme Court, October Term 1926, at 875. This record is hereinafter for convenience referred to as the G. E. Record.)

In respect of the nature of the patents in the General Electric case and in the instant case: The first incandescent electric lamp was invented in 1880 by Thomas Edison. The original patents for such lamps had expired long before the General Electric-Westinghouse license agreement was executed in 1912. The light giving element in the lamp of 1880 was a carbon filament. In 1904 an improved carbon filament known as "metallized carbon filament" was invented. Next a tantalum filament lamp was introduced. This reduced the consumption of current substantially as

compared with the standard carbon filament lamp, but it was not a satisfactory lamp for use on alternating current. Thereafter a tungsten filament incandescent electric lamp was introduced and was developed to such an extent that it consumed only about one-third of the current consumed by the carbon filament lamp in its best form, and less than one-half of that consumed by the metallized carbon filament lamp was therefore superior to those containing carbon filaments or metallized carbon or tantalum filaments. But the patents covering the tungsten filament lamp was not "basic" in the sense that they covered a fundamentally new and basic invention covering completely an incandescent electric lamp. They were merely for improvements upon the original invention of Edison of 1880. The tungsten filament manufactured under the Just & Hanaman patent of 1912 was brittle and in consequence expensive to manufacture and easily broken in shipment and use. The Coolidge patent of 1913 covered improvements which merely increased the tensile strength and endurance of the tungsten filament. The Langmuir patent of 1916 further improved the incandescent electric lamp for the introduction of gas into the bulb, and this improvement came to be used in many but not all of the tungsten filament lamps made. It thus appears that the Just & Hanaman, Coolidge and Langmuir patents (the three patents specifically mentioned in the opinion of the Court in the *General Electric* case) covered various features of the incandescent lamp having a tungsten filament, which represented a further development in the incandescent lamp field over the lamps with carbon, metallized, or tantalum filaments. At the time the General Electric-Westinghouse license was executed in 1912 about 50% of the total number of lamps sold were of the ordinary carbon filament type. After nine years of operation under the license, the percentage of tungsten filament lamps increased, because of their superior quality, to some 97% of total production. The General Electric Company occupied a dominant position in the incandescent lamp industry by reason of its patent ownership. It had patents not only on the tungsten filament lamps but also on the carbon and tantalum filament lamps, and the latter were included in the General Electric-Westinghouse license and the licensor reserved the right to fix the price of lamps having metallized carbon or tantalum filaments the same as it did in respect of tungsten filament lamps. The Court in the *General Electric* case drew no distinction as to General Electric's rights as the owner of patents covering different

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types of lamps. The step by step progress in electric lamp production was founded upon the original basic work of Edison.[22]

The principal patents upon which the license agreements in the instant case were founded, to wit, the Utzman, Haggerty and Roos patents, typical claims of which have been set out in the statement of facts at the outset of this opinion, were product patents upon a building material called plasterboard or wallboard. The patents, as will be noted from the claims, were upon the entire product, not merely upon the edge of the board in the Utzman patent, or upon the starch in the Haggerty patent, or upon the bubbles or air cells in the Roos patents. As appears in the statement of facts, these patents covered important developments in the gypsum board manufacturing industry. The open-edge board which preceded the closed-edge board of the Utzman patent had defects in that there was in its manufacture wastage due to the necessary trimming of the board edge, the edge was weaker, and the core would sift out in handling and nailing. When the closed-edge board of the Utzman patent came into the market the open-edge board was
8753 largely displaced under the demand of the trade for the better product. The Haggerty patent, directed to the employment of starch or a cooked carbohydrate in the core of the board to insure a good bond between the core and the paper covering sheets, solved the "peeler" trouble in the gypsum board industry, and made possible the modern high speed production of gypsum board. The Roos patents, covering cellular core gypsum board produced by the employment of foam or a foaming agent in the core to produce innumerable cells or voids, thereby lightening the board and lending desirable nailing and other qualities thereto, supplanted the sawdust theretofore a necessary "aggregate" used in the core. Sawdust had be-

22 This was recognized in *General Electric Co.* v. *Laco-Philips Co.*, 233 Fed. 96 (C. C. A. 2d, 1916), where the court, speaking of the Just & Hanaman patent, said: "I think the invention here in suit is of great merit, entitled to firm support, and second only to Edison's. Edison found a dim pathway and transformed it into an illuminated road. Just & Hanaman have broadened that road into a boulevard, alive with blazing lights." (233 Fed. at 105.)

In *General Electric Co.* v. *Independent Lamp & Wire Co.*, 267 Fed. 824 (D. N. J. 1920), the court, speaking of the Coolidge patent, said: "The ductile tungsten filament has gone into general use, and has in large measure, if not entirely, supplanted all other filaments, including that of Just & Hanaman, for incandescent electric lamps. It is less expensive to produce, yet it has far greater durability and utility than the squirted filament. It is a commercially new product of great utility, having properties and characteristics unknown to the natural and normal tungsten, or, in fact, to any other material." (267 Fed. at 828-9.)

come difficult to obtain and was moreover unsatisfactory as an "aggregate" because of variation in quality and character, which produced manufacturing difficulties. The use of the foam of the Roos patents solved these difficulties and produced a superior product with reduced manufacturing costs. Thus while the gypsum board manufacturing industry and the electric lamp industry deal with different materials, both nevertheless important to the occupants of modern houses and buildings, there is a parallel between the development of the two industries in the step by step improvements in an important product—gypsum board as a building material and the incandescent electric lamp as a lighting medium.

We think no substantial distinction can properly be drawn between the instant case and the *General Electric* case in respect of the importance of the patented improvements within the respective industries, or in respect of the nature of the patents which underlie the license agreements in the two cases. The basic patents on gypsum board had expired, we assume (it is so asserted by the Government and not denied by the defendants), before the execution of the license agreements in the instant case. The Utzman patent itself was for an improvement and it expired August 6, 1929. Likewise in the *General Electric* case the basic Edison patents of 1880 had expired at the time of the General Electric-Westinghouse license of 1912, and the patents upon which that license was based were improvement patents. It is true that the gypsum and the paper in gypsum board are as such not patented; but that is equally true of the metal base and the glass of the General Electric tungsten filament lamps. The patents, although on different materials, are of similar character and bear a similar relationship to the respective industries and the development thereof. The patents principally involved in the instant case no less, and no more, cover completely the patented product than do those principally involved in the *General Electric* case.

The patents in the instant case and those in the *General Electric* case are distinguishable from those involved in *Mercoid Corp.* v. *Mid-Continent Investment Co., supra,* and *Mercoid Corp.* v. *Minneapolis-Honeywell Regulator*
8754 *Co., supra.* Those cases dealt with combination or "system" patents covering a domestic heating system comprising three main elements—a motor driven stoker for feeding fuel to the combustion chamber of a furnace, a room thermostat for controlling the feeding of fuel, and a com-

bustion stoker switch to prevent extinguishment of the fire. The patents were upon the combination, not upon these constituent devices. Such patents are not comparable to a product patent, which covers the whole product, although no patent has been granted upon the constituent materials. The unpatented glass and metal base in an electric lamp and the unpatented calcined gypsum rock and paper in plasterboard are not to be compared with an unpatented constituent device in a combination patent.

In respect of the comparative number of (price fixing) licenses and the extent of manufacture and sale of the patented product in the General Electric case and the instant case: No material distinction can be drawn between the two cases because in the former there was but one (price fixing) competitor licensee whereas in the latter there are six. As appears from the opinions in the *General Electric* and *Bement* cases, the owner of a product patent may manufacture and sell the article himself alone if he sees fit and at such price as he may choose. Or he may "sell the right to manufacture and sell the article patented upon the condition that the assignee shall charge a certain amount for such article." (272 U. S. at 491, quoting from 186 U. S. at 93) In short the owner of a product patent may either exercise the monopoly thereof exclusively himself or he may divide its exercise. In the *General Electric* and *Bement* cases nothing indicates that the division of a patent monopoly is limited to the patentee and a single licensee. It can make no difference so far as the Sherman Act is concerned whether the patentee licenses no one, or licenses one, two, three, four, five or six or a dozen, others. Putting this otherwise, if the patent laws, despite the Sherman Act, do not legitimatize a monopoly in the manufacture and sale of a patented product by a patentee-licensor and several licensees, they cannot legitimatize a monopoly by the patentee-licensor and one licensee or by the patentee alone, *because in each instance the exclusion of the public from manufacture, use or sale within the field marked out by the patent is exactly the same, i.e., complete.* Once it is recognized that a patentee may divide his monopoly, no limit can reasonably be put upon the number of persons he may see fit to license, provided always the terms and conditions of the licenses do not go beyond those which normally and reasonably secure the rewards of a patent monopoly. If in the *General Electric* case the Court had held that the patent laws do not permit any

division of his monopoly by a patentee and had therefore stricken down the Westinghouse license (and the additional non price fixing licenses), General Electric itself
8755 would then have been in control of all of the manufacturing, using and selling of the electric lamps covered by the patents. Although but one price fixing license happened to be involved in the *General Electric* case, it would be an irrational fixation to construe the decision of the Court as limiting licensing under price fixing restrictions to one competitor, since the public is equally excluded *and equally subjected to the patentee's price* whether there is no licensee, one licensee or many. *Cf. United States* v. *Line Material Company*, 64 F. Supp. 970 (E. D. Wis. 1946); Laurence I. Wood, *Patents and Antitrust Law* (C. C. H. 1942) 182-3.

No distinction, moreover, can be drawn between the *General Electric* case and the instant case because the percentage of manufacturing and sale of patented electric lamps controlled by General Electric and Westinghouse, the single price fixing licensee, was but 85% of the total lamp business, whereas in the instant case USG and its six competitor licensees manufacture and sell substantially all of the gypsum board in the "Eastern area." It is not possible to conclude that the *General Electric* case would have been differently decided if 100% of the trade in electric lamps had been within the control of the General Electric and Westinghouse companies. It is not necessary for violation of the Sherman Act that a restraint of trade shall be complete; it is sufficient if it is substantial. *Paramount Famous Corp.* v. *United States*, 282 U. S. 30 (1930); *Fashion Guild* v. *Federal Trade Commission*, 312 U. S. 457 (1941). The control of the electric lamp industry under the General Electric-Westinghouse license was substantial. The control was recognized as legitimate not because it was limited to 85%, so far as price fixing restrictions were concerned, but because it was by virtue of a patent, and under license terms and conditions which the Supreme Court thought were normally and reasonably adapted to securing the reward which the General Electric Company as patentee was by the grant of the patent entitled to secure. Indeed, the Court expressly recognized in the *General Electric* case that a patentee is entitled to a complete monopoly. It said:

But it is said that the system of distribution is so complicated and involves such a very large number of agents, distributed throughout the entire country, that the very size

and comprehensiveness of the scheme brings it within the Anti-Trust law. We do not question that in a suit under the Anti-Trust Act the circumstance that the combination effected secures domination of so large a part of the business affected as to control prices is usually most important in proof of a monopoly violating the Act. But under the patent law the patentee is given by statute a monopoly of making, using and selling the patented article. *The extent of his monopoly in the articles sold and in the territory of the United States where sold is not limited in the grant of his patent,* and the comprehensiveness of his control of the business in the sale of the patented article is not necessarily an indication of illegality of his method. * * * [Italics supplied.] [272 U. S. at 485].

While it is not necessary to rest the conclusions above reached upon the following, it is of interest to note that it appears from the opinion of the Court in the *General* 8756 *Electric* case that in the year 1921 the relative percentages of business done by the companies in the electric lamp industry were: General Electric 69%, Westinghouse 16%, other licensees 8%, manufacturers not licensed 7%. While there were no price restrictions in the licenses of the other licensees, comprising 8%, the licenses granted by General Electric to Westinghouse and the other licensees contemplated a prorating of business between the licensor and all of its licensees, and also included type restrictions. The stipulation of facts discloses that "the amount of lamps licensed to be sold * * * is limited by the terms of each of such licenses." (G. E. Record, *supra,* at 92) Westinghouse was given a larger percentage (15% at first, later increased to 17.25%).[23] As to the restriction in respect of types of lamps, at the time the General Electric-Westinghouse license was executed General Electric wrote

23 The Westinghouse percentage was accomplished by a license provision that the royalty should be 2% of the sales price on that part of the Westinghouse production which amounted to no more than 15% (later 17.25%) of the combined General Electric and Westinghouse sales of the patented lamps, but that the royalty should be increased to 10% on any sales of Westinghouse in excess of that percentage. The license provided for a reduction of the 2% royalty to 1% after the total royalties paid by Westinghouse amounted to $800,000 (later increased to $945,000) or in any event at the end of 10 years; but it was specifically provided that under no circumstances should the 10% royalty on the excess sales of Westinghouse be decreased. It is to be inferred that General Electric did not regard it necessary to reserve the right to fix the price for the manufacturers given a small percentage to sell in a limited field, but that it thought that in the case of Westinghouse the percentage was sufficiently large to necessitate the reservation of the right to fix the Westinghouse price minimum in order to protect General Electric as licensor in its own market.

Westinghouse concerning the other licensees, or some of them:

> • • • it is understood that the arrangement with the Western Electric Company referred to will relate solely to lamps sold under the "Sunbeam" trademark.
>
> Also that the arrangement with the American Ever Ready Company referred to will relate solely to lamps of the miniature and decorative types.
>
> It is also understood that the General Electric Company will not sell lamps of its manufacture to either the Aetna, Capital, Liberty or Gilmore Company in excess of quantities which, added to the quantities manufactured by such Licensees, respectively, will equal the aggregate quantities which such Licensees are respectively licensed to manufacture under such licenses as may be granted to them respectively superseding the license dated April 1st, 1909.
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Our understanding is that the acceptance of the Westinghouse Company of the License of March 1st, 1912, is conditional upon the foregoing. [G. E. Record, *supra,* at 113.] Absent the legitimization of a patent, a restriction upon the quantity of a product sold in interstate commerce is a violation of the Sherman Act. *American Equipment Co.* v. *Tuthill,* 69 F. (2d) 406 (C. C. A. 7th, 1934.)[24] A restriction upon type of product would seem equally to be a violation, in the absence of a legitimatizing patent.

8757 From the foregoing it appears that the restrictive provisions in the General Electric licenses involved 93% of the industry, with actual price fixing provisions applicable to 85%. It is true that the opinion, so far as the second question therein involved is concerned, discusses only the legality of the Westinghouse license from General Electric in which the latter company imposed the condition that Westinghouse sales should be at prices fixed by General Electric and subject to change according to its discretion. But it is not to be assumed that the decision of the Court was not reached in the light of the facts shown by the record with reference to the terms of all of the licenses.

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24 A patent was involved in that case, but it was not upon the product (brick) on the output of which by licensees there was a quantity restriction. The patent was for a brick loading machine, and use of the patent as a foundation for the license agreements involved was, in a broad sense, subterfuge. This case is discussed in greater detail in topic VIII.

In respect of the terms and conditions of the license agreements and price bulletins in the instant case, as compared with the terms and conditions, including price provisions, of the General Electric-Westinghouse license: The terms and conditions of the license agreements and price bulletins in the instant case have been stated at the outset of this opinion; it is not necessary to restate them here. The provisions of the General Electric-Westinghouse license are summarized in the margin.[25] Comparison of the provisions in the two cases discloses no material distinction.
8758 In both cases the licenses were non-exclusive; there was to be no contest of the validity of the licensors'

25 Annexed to the stipulation of facts in the *General Electric* case and made a part of such stipulation were Exhibit A, the license agreement of March 1, 1912, and Exhibit B, the General Electric Company's del credere agency contracts, instructions and schedules, and purchase contracts. Annexed to the license agreement were a Schedule A, listing the patents on which the license agreement was founded, and a Schedule B, the contents of which will be referred to below. Comprised within Exhibit A, the license agreement, and Schedules A and B thereto, were the following provisions (which cover pages 111 to 180 of the Record of 875 printed pages in the *General Electric* case). It will be noted that, while not so segregated, they divide themselves into three general classes of provisions: general and miscellaneous provisions, including the provisions of the license agreement itself (Exhibit A) of some twenty numbered paragraphs; provisions for arriving at price; and provisions for protecting price.

The license agreement granted to the licensee a non-exclusive license under the patents listed in Schedule A, and under patents which the licensor might own or control, and under patents to be issued under patent applications owned by the licensor, for improvements on carbon filament, metallized filament, tungsten and tantalum filament lamps, and for improvements in machines, appliances or processes for the manufacture of such lamps. The license agreement impliedly forbade the licensee to contest, during the existence of the agreement, validity of the licensor's patents. The licensee agreed to pay royalties, and the licensor and licensee each agreed to keep books with reference to its manufacture, sales and shipments of all electric lamps, and to keep its books open to the inspection of the other. The license provided that it was granted on the express condition that the licenser should have the right to fix the licensee's prices, terms and conditions of sale of any tantalum, metallized carbon, or tungsten filament lamp which embodied any of the inventions of the patents included in the license. These terms and conditions were set forth in Schedule B. The licensee agreed that it would sell lamps only in accordance with Schedule B and under the licensor's form of contract and in compliance with general sales rules set out in Schedule B and at prices not lower and on terms and conditions no more favorable to the purchaser than those set out in the Schedule. The licensee agreed to make reports called for in the Schedule. The reports included: a report within ten days on all appointments of agents showing date of appointment and compensation allowed; an immediate report of each purchaser's contract entered into, with the amount on which discounts were based; an immediate report of all sales to purchasers for immediate delivery without contract; a report giving the net value of all lamps sold by each agent; a report giving the net value of all lamps delivered under purchasers' contracts; a monthly report of all allowances, replacements and other adjustments made on account of claims for defective lamps, or otherwise giving the amounts of such allowances; a report of the net value of incandescent lamps of each class sold and invoiced.

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patents; there were provisions for royalties, records
8759 and reports. In both cases the licenses were granted upon the condition that the licensor should have the right to fix the minimum prices at which the licensee
8760 should sell the patented product, the prices to be charged by the licensor and licensee to be the same.

Schedule B included, in addition to the general sales rules referred to above, forms for the appointment of B agents and A agents, for the purchase of incandescent lamps, instructions to manufacturers' agents, sales instructions for A agents and for B agents, price schedules of extra charges for tipless lamps, colored lamps, changes in standard base of lamp, etching letters and special lamps. Schedule B also contained a list of prices of the different types of metallized carbon, tantalum and tungsten filament (Mazda) lamps, a discount table and instructions with respect to deliveries, freight charges and the like. The licensee expressly agreed to sell lamps under the licensor's (manufacturer's) form of contract for purchase of lamps. This contract form covered a purchaser's estimated requirements for a year and contemplated that purchases should in no event exceed the purchaser's requirement of lamps for its own use during the period of the contract; required the purchaser to agree to pay for lamps in accordance with the rate of discount specified, and to pay transportation charges in accordance with an attached delivery schedule; provided for terms of 30 days with 2% discount for payment within 10 days; reserved to the manufacturer the right to cancel if lamps sold thereunder were used on lighting circuits other than those supplied with current by the purchaser exclusively, or other than those located in the building or on the property occupied, owned or leased by the purchaser. (The licensee was thus restricted entirely to making sales to consumers.)

The license agreement prohibited the licensee from selling in the territory of the Chicago Edison Company or the Boston Edison Company except to those companies.

The general sales rules in Schedule B provided that lamps might be sold at contract prices only to purchasers who had executed the standard form of purchase contract, and to purchasers for immediate delivery without contract where the seller had definite knowledge that the lamps so sold were for the purchaser's own immediate use; required that all purchase contracts must be made on standard forms furnished or approved by the licensor; required each contract to be limited to one brand of lamp. The sales rules provided that prior to the acceptance of any contract information regarding the amount of purchases for which the contract might be made must be obtained from the licensor; provided that on lamps purchased, billed and delivered at standard package or higher prices within 30 days prior to the signing of a contract, contract prices might be allowed, but that lamps ordered before the expiration of a contract and not delivered and invoiced within 30 days after the expiration thereof, should not be included in the contract. The sales rules provided that the requirements of more than one customer could not be combined and covered by one contract except where the lamps were ordered for use in installations owned or controlled by one corporation, co-partnership or individual. The sales rules, as well as the contract form above, required that the terms of sale should be 2% 10 days, 30 days net; they provided that no bid for use both in foreign and domestic territory should offer any lower price on the lamps for foreign consumption than on those for domestic use (although the right to fix the price on lamps applied only to those sold for use in domestic territory). Under the sales rules no sales or quotations were to be submitted on lamps covered by attached schedules in connection with any other material or lamps not covered by such schedules where the award of such business was based upon the combined value of the scheduled lamps and other lamps and materials; no sample was to be supplied free of charge; no guarantee could be made on lamps except in accordance with the "standard specifications"; allow-

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In both cases, in respect of prices, there were two classes of provisions, one class providing how price should be arrived at, the other intended to protect the price fixed, *i.e.*, to prevent indirect price cutting. In both cases the provisions for arriving at price were drafted in view of the fact that the ultimate price at which a product is to be sold cannot be

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ances for burned out lamps or bases were forbidden and also allowances or payments made to cover the cost of inspecting or testing lamps, except that factory facilities might be given without charge for the purpose of initial inspection or test, but not for life test. (These provisions were obviously intended to prevent indirect price cutting by the furnishing of services or other things of value to the purchaser.)

Under the price lists and discount schedules included in Schedule B there was a variation in prices and discounts depending upon the quantities purchased during a period of a year, and according to whether or not the purchase was in standard package quantities or in broken package quantities. The applicable discount varied from 10% to 37% in standard package quantities and 0% to 27% on broken package quantities depending upon whether the purchaser was in a bracket for $150, $300, $600, $1200, $2500, $5000, $10,000, $20,000, $40,000, $80,000, or $150,000 in total purchases during the period of a year. The license agreement placed certain restrictions upon the time within which changes might be made in the discount schedules.

The delivery and freight schedule set out in Schedule B provided that all lamps might be sold or billed to purchasers f.o.b. point of shipment, with freight allowed on shipments consisting of not less than one standard package to all points on or east of the Mississippi River, to all points in the states of Minnesota, Iowa and Missouri, and to all points on the Missouri River south of Sioux City, Iowa; on deliveries of less than standard package quantities, it was required that the goods should be sold only f.o.b. the manufacturer's place of business or that of his agent, and no allowance was to be made for either freight or express; as to all points outside the areas above described freight was to be added to the billing price of lamps in accordance with additional charges shown on the schedule, which were apparently calculated by the licensor on an average freight cost basis.

The license agreement obligated the licensee not to allow its agents any greater compensation than that allowed by the licensor to its agents; and the licensor expressly reserved the right to approve or disapprove any agent which the licensee might seek to appoint. The provision in terms was this: "It is understood that the Licensor proposes to appoint as agents, for the sale of a portion of its metallized filament, tungsten filament and tantalum filament lamps, persons and companies who will sell the Licensor's said lamps to consumers through their own salesmen. And this license is granted only upon and is subject to the condition that the Licensee shall not interfere with such portion of the Licensor's business in such lamps carried on in this manner, by offering to allow or allowing the Licensee's agents greater compensation than that allowed by the Licensor to its agents, as specified in said Schedule B, or by appointing as agents persons or companies of whom the Licensor affirmatively disapproves as being irresponsible representatives for handling metallized filament, tungsten filament and tantalum filament incandescent lamps covered by this license." (G. E. Record, *supra*, at 122-3) (This is to be compared with the provisions in the USG license bulletins purposed to prevent rebating on the price of patented board by the splitting of salesmen's commissions with customers.)

The license agreement forbade the licensee's selling any parts of an incandescent lamp made under the license, as distinguished from a complete lamp, without the written consent of the licensor; the licensee was permitted to refill burned out lamps and to sell the same, but was required to guarantee that any such lamps sold by it would not be refilled.

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arrived at merely by naming an amount, but that other factors which have economic relationship to price—such as terms of payment, cost of delivery to various areas, including freight charges, quantity sold, type of product sold, and the like, must also be stipulated. It was recognized by the Court in the *General Electric* case that terms of payment

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It was provided in the license agreement that if arbitrators should find that the licensee had sold at lower prices or on terms and conditions more favorable to the purchaser than those prescribed by the licensor, the damages for such violation of the license, in the absence of evidence to the contrary, should be an amount equal to the total value at the prices established under the agreement of the lamps involved in each transaction. A similar provision existed in respect of damages assessed against the licensor for any sales made by it at prices lower or on terms and conditions more favorable to the purchaser than those prescribed for the licensee.

The foregoing summary of the provisions of the General Electric-Westinghouse license agreement shows the restrictions placed upon the licensee by the license itself. As has been pointed out above in the text, the Government contended in the *General Electric* case that the license agreement itself required Westinghouse to adopt General Electric's del credere agency method of distribution and therefore to be bound also by the same restrictions therein which General Electric placed upon its own agents, and the Court held that, assuming this to be correct, "the result must be the same." (272 U. S. at 489.) Therefore the restrictions of the del credere agency contracts, instructions to agents and agents' compensation schedules, may be considered as having been held to be proper restrictions upon a licensee, although not contained in the provisions of the license agreement itself in the *General Electric* case. The restrictions are contained in Exhibit B, above referred to, and may be summarized as follows:

The General Electric del credere agency system divided the trade into three classes: (1) Large consumers readily reached by General Electric and sold directly by its own salaried employees with deliveries being made from its own factories and warehouses; (2) large consumers under contracts with General Electric, negotiated by agents, the deliveries being made from stock in the custody of the agents; (3) general consumers who were sold by agents under similar contracts. The agents under the second class were called B agents and those under the third class A agents. There were some 400 B agents of General Electric operating under two contracts, which specified in detail the manner in which they were to handle and distribute the lamps consigned to them. These agents performed the functions formerly performed by jobbers in the industry. The B agents were to recommend to General Electric efficient and reliable distributors to act as A agents. There were some 21,000 A agents—usually retail electrical supply dealers in small places. (At the time the stipulation of facts in the General Electric case was entered into Westinghouse Lamp Company employed approximately 140 B agents and approximately 6100 A agents throughout the United States.) The A agents were authorized to make sales only to consumers for immediate delivery and to purchasers under written contract with the manufacturer. Lamps were consigned to the A and B agents and were sold through them in accordance with minute instructions and detailed requirements. Rules for eligibility for appointment as B and A agents were established and standard forms of contracts to be entered into with different classes of agents were specified. The restrictions and requirements with respect to agents and purchasers were complex. The price schedules, discount schedules, agents' compensation schedules, forms of contracts for various types of purchasers and agents, and accompanying instructions in effect by January, 1925, cover 614 pages (pp. 180-794) of the printed record in the *General Electric* case.

and delivery affect price.[26] The provisions in the General Electric-Westinghouse license and in the licenses in the instant case in respect of indirect price cutting, *i.e.*, the price protective provisions, including those which relate to commission salesmen, are of similar character. This is commented upon further in footnote 25. If there is any difference between the provisions of the licenses in the *General Electric* case and in the instant case, it is in the greater stringency and complexity of those in the former.

The foregoing comparison of the patents involved in the *General Electric* case and in the instant case and of their relation to the respective industries, and the comparison of the amount of trade controlled by the parties to the license agreements in each of the two cases, and of the terms and conditions of the license agreements, and the conclusion reached above that no material distinction exists between the two cases, require that the question stated at the outset of this topic II be answered in the affirmative. That is to say, the license agreements described in the statement of facts at the outset of this opinion, examined in the light of the nature of the principal patents upon which they were founded, in the light of the fact that the defendants make and sell substantially all of the gypsum board in the "Eastern area," and in the light of the terms and conditions
8761 of the agreements, including those relating to price, are lawful. The decision in the *General Electric* case must be taken as sanctioning division of a patent monopoly by the granting of one or more licenses based on improvement patents, of control by a patentee through licenses of the price of either a major portion or all of a product made and sold in an industry, and of such stringent terms and conditions of patent licenses, including both price fixing and price protective provisions, as are shown by the record in that case. Since the facts in the instant case are substantially parallel to those in the *General Electric* case in the respects mentioned, the license agreements in the instant case must be considered valid.

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26 As pointed out earlier in this topic II, the Court in the *General Electric* case said, in respect of the *Bement* case: "A combination of manufacturers owning a patent to make float spring tool harrows, licensed others to make and sell the products under the patent, on condition that they would not during the continuance of the license sell the products at a less price, *or on more favorable terms of payment and delivery to purchasers*, than were set forth in a schedule made part of the license. That was held to be a valid use of the patent rights of the owners of the patent. * * *" (Italics supplied.) (272 U. S. at 490-1)

It is stated in the stipulation of facts in the record in the *General Electric* case that Westinghouse in negotiating its license dealt with General Electric "at arm's length," and it is suggested by the Government that on that account the two cases are distinguishable.[27] If by the suggested distinction the Government means to imply that there was coercion by USG in obtaining execution of the license agreements in the instant case, it is to be answered that there is no charge of coercion in the complaint and that the suggestion is therefore irrelevant to any issue defined by the pleadings. If by the suggestion is meant that the license agreements in the instant case were not executed in good faith, that is an issue which is discussed below.

It was said above that in addition to the primary propositions for which the *General Electric* case stands (that a patentee may divide his monopoly by licensing the right to make, use and vend the patented product, and that he may fix the terms and conditions, including the price, under which the patented product may be sold by the licensee, subject only to the limitation that such terms and conditions do not yield to the patentee more than the normal reward of a patent monopoly), the decision stands for certain further propositions, corollary to its primary holdings. These corollary propositions appear as follows:

The *General Electric* case demonstrably involves on its facts negotiation and discussion resulting in a "contract in restraint of trade," a "combination and conspiracy in restraint of trade," a "monopoly," "price stabilization," substantial elimination of manufacture and sale of inferior materials, *i.e.*, "standardization," and elimination of
8762 an element (jobbers) in the distributive system, *i.e.*, "control of distribution." All of this, except for the legitimatizing patents upon which the General Electric-Westinghouse license agreement was founded, except for the fact that the terms and conditions of the license did not, in the view of the Supreme Court, yield to General Electric more than the normal reward of its patent monopoly, and except for the fact that the price stabilization, standardiza-

27 "* * * The Westinghouse Electric & Manufacturing Company in negotiating and executing said license acted in entire good faith, and witnesses called on its behalf would testify (and this shall be regarded as testimony given in this case) that in the negotiation of said contract it dealt with the General Electric Company at arm's length and secured the most favorable terms that it was able to negotiate after protracted discussions covering a period of many months, and believed and still believes that the license finally obtained was reasonable and fair and entirely lawful in every respect." (G. E. Record, *supra*, at 105)

tion of materials, and control of distribution were but the normal and incidental fruits of a patent monopoly and licensing thereunder, would have been a violation of the Sherman Act. As a matter of course the complicated General Electric-Westinghouse license was not entered into without preliminary negotiation and discussion. This is shown in footnote 27, and further in the following from the stipulation of facts:

At the time of the aforesaid decree the General Electric Company was the owner of the patent rights relating to the tungsten filament lamp, upon which applications had then been filed and under which the above mentioned Just & Hanaman patent No. 1018502 and Coolidge patent No. 1082933 were subsequently issued. Because of the superiority of the tungsten filament over the carbon filament, the exclusive right to make, use and vend lamps manufactured with tungsten filaments under the aforesaid patents, if valid and lawfully acquired by the General Electric Company, and of the scope indicated by their claims, vested in their owner, the General Electric Company, what has since become a practical monopoly of the manufacture and sale of incandescent electric lamps. *The Westinghouse Electric & Manufacturing Company because of this situation entered into negotiations with the General Electric Company,* for a license to manufacture under said patents, which negotiations resulted in the arrangement now in existence, as set forth in the above mentioned agreement, dated March 1, 1912, between the Westinghouse Electric & Manufacturing Company and the General Electric Company. * * * [Italics supplied.] [G. E. Record, *supra,* at 104.]

The record in the *General Electric* case also shows that General Electric, in entering into the license agreement with Westinghouse, discussed with Westinghouse the terms of the licenses with the other licensees. This appears from that portion of the record above quoted as demonstrating quantity and type limitations upon the other licensees. The license agreement between Westinghouse and General Electric was, of course, a "contract." In performing the obligations of the license agreement, Westinghouse and General Electric constituted a "combination and conspiracy" as did General Electric and each of the other licensees in performing the obligations of the several other licenses which, although they did not subject the other licensees to price control, did impose quantity and type limitations upon them. The General Electric-Westinghouse license controlled

a sufficient amount of trade in electric lamps, 85%, to constitute a "monopoly" which, in the absence of a patent, would have been a violation of the Sherman Act. Since General Electric and Westinghouse were both to sell the patented product at the same price, there was "price stabilization" as between them, and hence in the electric lamp industry, since they controlled 85% of it; and the price was set, presumably, at a profitable level. The increase in tungsten filament lamps to 97% of total production, be-
8763 cause of their superior quality, with the consequent substantial elimination of sale of lamps of the ordinary carbon filament type, accomplished "standardization" of the patented product. The arrangements for selling direct to consumers with consequent elimination of jobbers under the General Electric agency distribution plan adopted by Westinghouse constituted "control of distribution."[28] Finally, it is obvious in the *General Electric* case that the very purpose of the negotiation, discussion, execution of the license, and conducting of operations thereunder, was, on the part of the General Electric Company, that of exploiting its patent monopoly through collection of royalties, and at the same time, by means of price control, protecting its own profit in the making and selling of the tungsten filament lamps; and, on the part of Westinghouse, that of acquiring the right to make, use and sell the superior patented article and thereby making profit. And both must have expected, since both were to sell at the same price, that this "price stabilization" between them would cause stabilization in the industry; and both must have hoped and expected that their making and sale of the superior lamps would lessen the making and selling of inferior products by them and by others; and both clearly purposed the "control of distribution" through the elimination of jobbers. Yet the Supreme Court regarded none of this, in either purpose or accomplishment, as illegal. It looked upon the negotiation, discussion, license agreement and operations thereunder as the accomplishment of a lawful end by lawful means.

It follows from the foregoing that the terms "contract in restraint of trade," "combination and conspiracy," "monop-

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28 It has been pointed out earlier in this topic that the General Electric plan of distribution which, had it been a requirement of the General Electric-Westinghouse license, would not, the Court said, have changed the result in the case, "was of course devised for the purpose of enabling the company to deal directly with consumers and purchasers, and doubtless was intended to avoid selling the lamps owned by the company to jobbers or dealers, and prevent sale by these middle men to consumers at different and competing prices. * * * " (272 U. S. at 483)

oly," "price fixing," "price stabilization," "standardization," and "control of distribution" do not necessarily carry an illegal connotation. Confusion is avoided if this is borne in mind. Showing, without more, in a case brought under the Sherman Act, but involving a patent license, that there have been relationships, operations and accomplishments, which, grossly, are within the terms quoted, is not enough. The question in such a case is not merely whether there has been a "contract," a "combination," a "monopoly," "price fixing," "price stabilization," "standardization," "control of distribution," and a purpose to accomplish and a partnership in accomplishing such *actual* restraints of trade—for the patent laws, within their limits, permit all of the foregoing; the question in such a case is whether the purposes and accomplishments of the parties to the license contract went beyond the lawful limits of a patent monopoly and into
8764 the field of purposes and acts denounced by the Sherman Act. Were the "restraints of trade" *illegal, i.e.,* of Sherman Act quality and extent, or were they such as the patent laws permit—is the question.

The *General Electric* case illustrates that the law, whether in the form of a statute, or of principles arising out of judicial application of a statute (in this instance the statute authorizing the granting of patents and the principles arising out of judicial application thereof to patent licensing arrangements and operations) cannot legitimatize such arrangements and operations and at the same time stigmatize as unlawful the purpose to bring them about, the necessary means of bringing them about and carrying them on, or the consequences that normally flow from them. The *General Electric* case establishes that a patent license agreement granting the right to make, use and vend a patented product, under terms and conditions, including prices, fixed by the licensor, is lawful. Such a license agreement ordinarily, and, when the prices are (as in the *General Electric* case) a part of the license contract, necessarily, involves negotiation and discussion between the licensor and the licensee and agreement upon the terms and conditions, a purpose to execute and carry out the agreement, combined action in signing the agreement and in performing the obligations thereof, with knowledge that it will result in a stabilized and presumably profitable price for the patented product as between the parties and in the industry (since the parties are, by virtue of the patent, the only ones having a right to make, use and sell the superior patented product) and with knowledge that it will result in a monopoly (*i.e.,* a

divided patent monopoly), in probable discontinuance of manufacture and sale by the licensee of inferior materials (the licensee's incentive to take a license is the right to make the superior product), and in control of distribution. What a lawful patent license agreement normally involves cannot be unlawful. Additionally, since a patent owner may lawfully divide his patent monopoly with a plurality of licensees, there will in the usual course be with each of such licensees the same negotiation and discussion, agreement upon terms, purpose to execute and carry out a license contract and to accomplish its normal results, and combined action in so doing, as in the case of a single licensee. And each licensee will be informed of and discuss with the licensor the terms and conditions of the proposed licenses; otherwise no more than a single license could be executed. A patent owner would not be able to license competing manufacturers upon different price terms; no one such would be willing to suffer competitive disadvantages; no one such would be willing to sign in the dark as to the terms to be extended to the others; ordinarily, moreover, there will be discussion at large, *i.e.*, with the trade, of the advantages
8765 and disadvantages of the licenses proposed by the patent owner. Each of a plurality of licensees will, moreover, have the same purpose to take a license and to secure its resulting advantages. The licensor and each licensee of such a plurality constitute a "combination" to effectuate the purposes of their license. Since a plurality of licenses is lawful, all of this must be lawful. Further, if in practical effect the licensor and the plurality of licensees are a "combination" to the same end, such a "combination" is not stigmatized by the law—provided in purpose and effect it does not secure to the patent owner more than the normal reward of a patent monopoly, nor to any of the licensees with whom that monopoly is divided more than the advantages which naturally result to a licensee, as well as to a licensor, from patent licensing. All of this necessarily follows from the *General Electric* case. Compare the words of the court quoted from the *Motion Picture Patents* case, *supra*.

In the course of the oral arguments upon the motions now under consideration in the instant case, the presiding judge put to the Government the following questions:

Justice Stephens: Since your argument is being interrupted by these questions and since you are going to discuss the General Electric case in greater detail, I should like to put to you * * * some problems which arise in my mind on what seems to be your opinion, from the briefs and your statement this morning, with respect to the General Elec-

tric case, not with the expectation you will answer them now but so that you can think them over and answer them later.

I have read the General Electric case very carefully and given considerable thought to your position as announced in your briefs that it really is not a case which controls the instant case. My thinking takes me back first, on the subject of the General Electric case, to what is the nature of a patent or of a so-called patent monopoly. It is not, as I understand it, quite like a monopoly such as the Government gives to one to whom it grants Blackacre—which the Government, as the representative of the people, originally owned entire and now passes over upon some consideration to a grantee in perpetuity or in fee simple. It is not that kind of monopoly because the Government never did have the process or product or design or machine which becomes the subject of a patent. The invention was originally in the mind of the inventor. What the Government gives him, what we call a patent monopoly, is an exclusive right to make, use and vend over a period of years and theory of that is, as I have always understood it, that that will be an inducement to him to disclose the results of his inventive activity to the public for the benefit of the public and to the development of industry.

As I understand the theory of the General Electric case, since a patentee does have an exclusive right to make, use and vend over a period of time, he may make a choice between keeping that himself, keeping his patent monopoly exclusively in him over the period of the patent and licensing the right to make, use and vend to someone else and he may, under the theory of the General Electric case, fix reasonable terms and conditions, including prices, on the first sale by his licensee, in protection of his patent monopoly.

Let's assume for the moment that the General Electric case means that he can only have one licensee. He cannot enter into an agreement with that licensee without discussion of terms and conditions and prices; so that far, at least, the discussion cannot be illegal. The getting together of the parties cannot be said to be the kind of a conspiracy which is illegal under the Sherman Act because the Sherman Act and the patent laws stand together.

I have difficulty in seeing, taking the next step, how it can be said that the General Electric case confines a patentee to licensing one licensee—because what difference can it make, if he has a right to retain the whole patent monopoly in

himself if he wishes to, whether he divides it with one or divides it with ten or with a hundred? It is still a patent monopoly. The public is excluded except to the extent that he gives it the benefit of the invention by using it himself or by dividing it with licensees. If it then follows from the General Electric case that a patentee can have more than one licensee, again how can it be illegal for the group
8766 of licensees or the several licensees to discuss either with him or with each other the terms of the license arrangements? In short, how can the law both give and take away with the same hand? It gives the right to enter into either one or a group of patent-license agreements. Does it not necessarily also give the right to do the things that are normally necessary to constitute such agreements—talk about them and discuss the terms? Must a patentee go by stealth and by night to each licensee separately to make out the license agreement and avoid any discussion with the group?

Moreover, if the suggestions I have made concerning the General Electric case are sound, if it is lawful to enter into a license agreement containing price-fixing terms and conditions in reasonable protection of the patent monopoly with either one or a series or a group of licensees, how can it be illegal to accomplish the inevitable economic consequences of that, which you phrase as blanketing an industry or stabilizing prices, or even producing uniformity in products because the patented product is more likely to sell because of its merit; and if it is not illegal to accomplish the normal economic consequences of licensing, how can it be illegal to talk about them and arrange for them in entering into license agreements? [Tr. 7259-7262.]

These questions were not satisfactorily answered by the Government either in the course of the further oral argument or in the written briefs submitted on the motions.

The principles and propositions stated and the conclusions reached in this topic H leave for determination two issues of fact. There is no dispute about the nature of the principal patents upon which the license agreements were founded, or about the extent of manufacture and sale by the defendants of gypsum board in the "Eastern area," or about the signing of the agreements, or about the terms and conditions thereof, including those for the establishment and protection of minimum prices on patented board made and sold by the defendants. It has been determined that the license agreements, looked at in the light of the nature of

the patents, of the fact that the defendants make and sell substantially all of the gypsum board in the "Eastern area," and in the light of the terms and conditions of the agreements, are lawful. But it has been assumed in this topic that the license agreements are bona fide agreements; whereas it is charged by the Government that they are not such but are sham and were entered into for illegal purposes. It has also been assumed in this topic that the agreements were carried out according to their terms, which have been held valid; whereas it is charged that the operations of the defendants actually went beyond the proper limits of a patent monopoly and licensing thereunder.

These two questions of fact are therefore left for decision: One, were the license agreements not entered into as bona fide agreements, but merely to give color of legality to a combination to restrain trade in violation of the Sherman Act; the other, were the actual operations of the defendants carried beyond the proper limits of a patent monopoly and licensing thereunder, *i.e.*, beyond the activities contemplated by the agreements as written and into the field denounced by the Sherman Act. But before determination of these two issues of fact can be made, a question relating
8767 to the burden of proof must be answered, comment must be made upon certain pertinent principles of proof, and the rule concerning the admissibility of declarations of alleged co-conspirators must be stated. And, preliminary to consideration of the two issues of fact, there must be determined, under the motions to strike declarations admitted in evidence subject to connection, whether there is evidence outside the declarations of the existence of the conspiracy charged and of the defendants' participation therein.

III

The Burden of Proof; Principles of Proof; the Rule Concerning Admissibility of Declarations of Alleged Co-Conspirators

The burden of proof: As has been stated at the outset of this opinion, the Government's complaint in paragraph 44 charges, in the language of the statute, violations of Sections 1, 2 and 3 of the Sherman Act; and in paragraph 45 these charges are amplified by allegations that the defendants have combined to fix arbitrary and non-competitive prices for the sale of gypsum products both patented and unpatented, to standardize the products which they manu-

factured, to control distribution of such products, and to require manufacturing distributors, upon resale of products purchased from the defendants, to conform to arbitrary and non-competitive prices. The complaint then alleges in paragraph 46 that the combination was entered into and carried out by the defendants in part under the guise of license agreements purporting to relate to the use of patents owned by the defendant USG in the manufacture of gypsum board; that to give color of legality to the combination, the defendant companies and other companies agreed among themselves to enter into, and did enter into, these license agreements; that such agreements are not bona fide patent license agreements reasonably designed to secure to USG the pecuniary reward for valid patent monopolies, but were entered into and executed for the illegal purposes described in paragraphs 44 and 45 of the complaint. Paragraphs 44, 45 and 46 of the complaint are set out verbatim in the description of the charges at the outset of this opinion.

The defendants USG, Avery and Knode, in paragraph 35 of their answer, respond to paragraph 46 of the complaint by denying each and all of the averments thereof. Then, "further answering," they aver that USG developed improvements in the manufacture of gypsum products and that it owns numerous patents covering its inventions; that it acquired a legal monopoly in the manufacture, use and sale of products embodying the inventions of its patents, and that it determined to share that monopoly and to grant licenses to the end that the gypsum industry and the public might benefit; and that as a condition in said licenses, USG reserved the right to establish minimum prices. The
8768 right so reserved to USG was, so it is further averred, designed to and did protect its patent rights and was a lawful restriction under the patent laws and the decisions of the Supreme Court; the license agreements, it is alleged, involved basic patents and were in law and in fact bona fide agreements reasonably designed to secure to USG the pecuniary reward for its valid patent monopolies to which it was entitled. The full text of this paragraph 35 of the answer of USG, Avery and Knode is set forth in the margin.[29] The answers of National and Baker, of Ebsary

29 "35. Deny each and all of the averments contained in Paragraph 46 of the Complaint and, further answering, these defendants aver that through extensive research work carried on by the expenditure each year of substantial sums of money, the defendant, United States Gypsum Company, developed extensive improvements in the art of manufacturing gypsum products and in the character and quality of such products and acquired and now owns numer-

(*Continued*)

and Fred Ebsary, and of Newark and Tomkins deny the allegations of paragraph 46 of the complaint. The defendants Certain-teed and Hartley deny the allegations of paragraph 46, except that these defendants admit that the licenses referred to in paragraphs 76, 85, 113 and 117 of the complaint were executed between USG and Certain-teed;[30] they deny that the license agreements were made for any purpose described in paragraphs 44, 45 and 46 of the complaint, and aver that each agreement was voluntarily made for the lawful purpose of enabling Certain-teed to make, sell and distribute gypsum products covered by USG patents. The defendants Celotex and Dahlberg deny the allegations of paragraph 46 of the complaint; further answering, these defendants aver that Celotex was organized in 1935 and did not until 1937 engage in the gypsum business directly or indirectly, that in 1937 and 1938 it acquired a minority stock interest in Certain-teed and thereafter began selling gypsum products manufactured in plants of Certain-
8769 teed, that in 1939 Celotex acquired the assets of American, including the license agreement between USG and American, and that upon advice of counsel Celotex assumed the obligations of that license agreement and has ever since observed its terms. Texas denies the allega-

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ous United States Letters Patent covering its inventions and improvements embodied in said gypsum products and in their manufacture, particularly with regard to gypsum board. Further answering, these defendants aver that, in accordance with the patent laws of the United States, the defendant, United States Gypsum Company, acquired a legal monopoly in the manufacture, sale and use of such gypsum products embodying the inventions and improvements set forth and claimed in its said patents and that, after due deliberation, said defendant determined to share its said monopoly with other manufacturers of gypsum board through the granting of licenses to manufacture and sell gypsum board embodying the inventions and improvements set forth and claimed in said defendant's patents, to the end that the gypsum industry and the public generally might benefit through the production and enjoyment of a superior product they could not otherwise have produced or had, and, as a condition in said licenses and for the reasonable and appropriate protection of the patent rights which it had acquired, the defendant, United States Gypsum Company, reserved the right to establish the minimum prices at which its licensees might sell the patented products so manufactured by them, pursuant to the terms of the license agreement. These defendants further aver that the right so reserved to defendant, United States Gypsum Company, was designed to and did protect said defendant's patent rights and was an entirely proper and legal restriction within the purview of the patent laws and the decisions of the Supreme Court of the United States; that the said license agreements involved basic patents in the manufacture of gypsum board and were, in law and in fact, bona fide license agreements, reasonably designed to secure to the defendant, United States Gypsum Company, the pecuniary reward for its valid patent monopolies to which it was entitled."

30 These are the paragraphs of the complaint which allege the execution by USG and Certain-teed of the May 1929, November 1929, metallized board, and perforated lath license agreements.

tions of paragraph 46 of the complaint; further answering, Texas alleges that it made license agreements with USG in good faith and in the belief that USG had basic patents, that all of the agreements were made in due course of business and for legal purposes, and in order to permit Texas to make gypsum products, and that, relying upon the validity of the patents and the legality of the agreements, Texas expended large sums in plant equipment.

It is the contention of the Government that in this state of the pleadings the burden is upon the defendants, by way of confession and avoidance, to justify under the patent licenses the restraints of trade described in the complaint. The Government relies, in this contention, so far as the effect of the pleadings is concerned, upon the *Motion Picture Patents* case, stated in another connection in topic II of this opinion; and, so far as the bearing of the substantive law is concerned, upon the *Masonite* case, also referred to in topic II, *United States* v. *Socony-Vacuum Oil Co.*, 310 U. S. 150 (1940), *rehearing denied*, 310 U. S. 658 (1940), and *United States* v. *Bausch & Lomb Co.*, 321 U. S. 707 (1944). The defendants assert that the burden of proving lack of bona fides in the license agreements is upon the Government.

The foregoing is, however, for the purpose of consideration of the contentions concerning burden of proof, an insufficient description of the pleadings of the Government in respect of the patent license agreements. Not only has the Government in paragraph 46 of the complaint set up the execution of such agreements and charged them not to be bona fide, but also in subsequent paragraphs of the complaint it has in detail alleged the circumstances leading up to the execution of the license agreements, and has set forth in detail the manner in which it claims that they were carried beyond the normal limits of a patent monopoly. These allegations have been outlined at the outset of this opinion. Particular reference may here be made, however, to the following paragraphs of the complaint: Paragraph 77 charges that at the time of the execution of the May 1929 licenses USG and its licensees, among other things, mutually agreed that they would immediately discontinue the manufacture of unpatented open-edge board and dispose of inventories of the same at prices to be fixed by USG, agreed that USG would immediately furnish and stabilize prices for board, agreed that as prices for board were raised all companies would increase their prices for plaster and miscellaneous gypsum products, and agreed that the prices

for board manufactured by the licensees would be
8770 controlled, through the use of other patents, by USG after the expiration of the Utzman patent in August 1929. Paragraph 86 alleges that for many years prior to 1929 the licensees, except Ebsary and Kelley, had been using adhesives in the manufacture of board to increase adhesion between the core and liners, and that the licensees, in addition to the agreements contained in the licenses of November 1929, mutually agreed among themselves and with USG to consider such use of adhesives as falling within the scope of the Hite and Haggerty patents for the purpose of permitting price control by USG during the life of said patents; and that Ebsary and Kelley agreed to commence using adhesives for the same purpose. Paragraph 93 alleges that USG and its licensees have by concerted action sought to standardize the manufacture of gypsum board and have refrained from manufacturing and marketing open-edge board and other board not within the agreed upon scope of the patents involved in the license agreements, and that National was induced, by USG and the other licensees, in 1934 and 1935, to refrain from marketing a new light weight board until the other licensees were equipped to make and market a similar board. Paragraph 95 alleges that USG and its licensees, for the purpose of eliminating distribution of gypsum products through jobbers, agreed among themselves to sell gypsum board to jobbers at no less than the minimum prices set by USG for sale of board to dealers and to sell plaster and miscellaneous gypsum products to jobbers at no less than the prevailing minimum prices to dealers for such products, and that this agreement was carried into effect. Paragraphs 96-102 charge that the licenses were used to fix the price of unpatented board in that prices were fixed on unpatented open-edge board, on closed-edge board manufactured and sold during the period from August 6 to November 5, 1929, when USG owned no patents covering such board, that prices were fixed under the Haggerty and Hite starch patents from November 1929 to October 1935, although none of the licensees, except Universal, was manufacturing board under those patents, and that prices were fixed after October 1935 under the Roos foam patents notwithstanding that a substantial part of the board produced by various of the licensees was not covered by the patents issued upon the foam process. Paragraph 103 asserts that beginning in May 1929 USG and its licensees concertedly raised and stabilized the prices of plaster and miscellaneous gypsum products and agreed to sell, and have sold, such

products on the basis of various of the terms and conditions prescribed by USG for the sale of gypsum board. Paragraph 108 alleges that since 1929 USG and its licensees have by concerted action induced and coerced manufacturing distributors purchasing gypsum board from them to resell such board to dealers and consumers at bulletin prices determined and fixed by USG for sales of board by its licensees to such trade. All of these paragraphs of the
8771 complaint are in aid of the allegations of paragraph 46 as well as of paragraphs 44 and 45.

In this condition of the pleadings, it would be extraordinary to place the burden of proof in respect of the bona fides of, and the propriety of operations under, the patent license agreements upon the defendants, in the absence of some clear requirement of adjective or substantive law. To place the burden as urged by the Government would be, in effect, to strip the Government's complaint of all of its allegations in respect of the patent license agreements, to eliminate from the complaint paragraph 46, and the other paragraphs which supplement the same, alleging the execution and the manner of applying the license agreements. All of these allegations would thus be treated as surplusage and the Government's case would be left resting in the large upon the contents of paragraphs 44 and 45. Where the Government has pitched its case as carefully and elaborately as it has upon violation of the Sherman Act through the execution of patent license agreements not bona fide, and not designed to secure to USG the pecuniary reward for valid patent monopolies, but executed only for illegal purposes, and where the Government has set forth in such detail as it has the manner of accomplishment, through misuse of patent license agreements, of these illegal purposes, it ought to be required to prove the case it has thus alleged unless, as said, there is some clear rule of adjective or substantive law which relieves it of this burden.

None of the cases relied upon by the Government, *Motion Picture Patents, Masonite, Socony-Vacuum* and *Bausch & Lomb,* supports its contention concerning the burden of proof on the issue in question. In the *Motion Picture Patents* case the court introduced its discussion of the effect of the patents there involved by saying: "The next branch of the defense which presents itself for analysis and discussion is that based upon the patent rights of the Motion Picture Patents Company. The plea is, in legal effect and in practical acknowledgment, one in confession and avoidance, for

there is, as already stated, a substantial (although not formal) admission that, with this patent right ownership out of the case, plaintiff should have the relief prayed." (225 Fed. at 803.) But the pleadings are not set out in the opinion of the court; therefore, it cannot be determined whether or not the complaint, as in the instant case, charged that the restraints of trade alleged were accomplished through the misuse of patent license agreements. For all that appears on the face of the opinion, there may have been no mention of patents in the complaint; the defendants may without contest have assumed the burden of justifying their acts under patents. It does not appear that any question was raised as to the burden of proof in respect of patent rights. The case is, therefore, inconclusive. There is, moreover,

conclusive authority to the contrary: Where an in-
8772 dictment under the Sherman Act charges a conspiracy in restraint of trade, and monopolization, by a company, its officers and agents, and alleges patents covering products manufactured and sold, the indictment must also negative that the trade and commerce was covered by the patents. *Patterson* v. *United States,* 222 Fed. 599 (C. C. A. 6th, 1915), *cert. denied,* 238 U. S. 635 (1915). Demurrers to three counts of the indictment in that case were overruled by the trial judge. On appeal after trial and conviction the Circuit Court of Appeals found certain errors in exclusion of evidence and in instructions to the jury in respect of the first count, and held that demurrers should have been sustained as to the second and third counts. With respect to the third count, the court said:

"* * * The indictment, having thus charged that the National [Cash Register] Company had patents covering the cash registers made and sold by it, should have negatived that the trade and commerce which it so secured and held onto was covered by those patents. In the first count it is alleged that defendants' conduct therein complained of was not "justified or warranted by any letters patent"; but it was not meant thereby to charge that the trade and commerce affected by the conspiracy complained of therein was not covered by the National Company's patents, for it is the position of the government that the defendants were not justified or warranted by those patents in protecting the rights so secured in that way. It is charged in the first count that at the beginning of the 20 years the National Company did 80 per cent. of the manufacturing of cash registers. This of itself was a practical monopoly. It is not

alleged that it had been secured by wrongful acts. Presumably it was entitled to it under its patents. It is true that it is alleged that long before the 3 years preceding the finding of the indictment most of the basic patents and many of the improvements had expired. But this concedes that some of the basic patents were then still unexpired at the beginning of the 3 years, and it is consistent with the fact that such was the case as to a great number of improvement patents. Everything, therefore, which the count alleges, may be true, and yet the National Company have been entitled to hold onto the business which it had so secured, in which case its conduct in so doing could not have been monopolizing. [222 Fed. at 625.]

It would follow from this ruling that the burden of proof, upon an allegation negativing that the trade and commerce charged to have been restrained was covered by the patents, must have been upon the Government, since it is elementary that a pleader must prove those allegations which are essential to his complaint. In *Dickson* v. *Uhlmann Grain Co.*, 288 U. S. 188 (1933), the Grain Company, a broker, sued Dickson, a customer, for commissions and advances on contracts for purchases and sales of grain. Dickson answered that the contracts did not contemplate that any grain should actually be bought and sold or delivered in his behalf and were in consequence in violation of the Missouri Bucket Shop Law, having been executed in that state. This defense, like the assertion of the Government concerning the license agreements in the instant case, was, in effect, an allegation that the contracts were fictitious, *i.e.*, not bona fide contracts for purchases and sales. It was contended by the Grain Company that the burden was upon Dickson, who made this allegation, to prove it. The Court so held.

So far as the substantive law is concerned, the contention of the Government is that an agreement to fix prices on products in interstate commerce is *per se* a violation of the Sherman Act; and the Government appears to urge
8773 therefore that a complaint charging price fixing, as in paragraph 45 of the complaint in the instant case, states a cause of action; hence it is sufficient for the Government to prove the allegations of that cause, leaving the burden of justification under patents to the defendants. It is true that it is held in *United States* v. *Masonite Corp.*, *United States* v. *Socony-Vacuum Oil Co.*, and *United States* v. *Bausch & Lomb Co.*, cited by the Government, that price fixing, reasonable or unreasonable, is unlawful *per se*. But in the *Masonite* case, although the "hardwood" involved

was covered by patents owned by Masonite, the options of the other defendants to take patent licenses from Masonite were not exercised; the case therefore does not involve price fixing alleged to have resulted from the misuse of patent license agreements. Neither *United States* v. *Socony-Vacuum Oil Co.* nor *United States* v. *Bausch & Lomb Co.* involved patents at all. The *Bement* and *General Electric* cases, as has been demonstrated in topic II, hold that price fixing under patent license agreements is not an illegal restraint of trade, but a valid exercise of a patent monopoly so long as the terms and conditions of the agreements and the practice thereunder are limited to reasonably securing to the patentee the reward to which by virtue of the grant of the patent he is entitled. From these cases it is to be inferred that a complaint under the Sherman Act, alleging price fixing under patent license agreements, without more, would not state a cause of action. It would follow that proof of such allegations alone would not carry a plaintiff's case beyond a motion to dismiss. In view of the holding in the *Bement* and *General Electric* cases, it must be alleged, and therefore shown, in order to make out a case of violation of the Sherman Act, either that the patent license agreements were not bona fide, or that even if not sham agreements as executed, the operations under them were carried beyond the proper limits of a patent monopoly. The *Bement* and *General Electric* cases were decided upon the assumption that the license agreements were bona fide. The contention in those cases was that even under bona fide patent license contracts price fixing is not lawful, and the Court rejected that view. But obviously a case of unlawful price fixing would be made out under the Sherman Act if it were alleged and shown that the patent license agreements providing for price fixing were not bona fide, but were entered into only to give color of legality to the conduct of the parties. Patents would not sustain price fixing if not honestly used. Equity would regard the substance, not the form. It is clear that it is upon this theory that the Government's complaint was drawn. Having pitched its battle upon this ground, the Government ought to be required to fight it there. There is no clear requirement of law, in any of the cases cited by the Government, placing upon the defendants the burden of proving bona fides in execution and practice under the patent license agreements. The cases which
8774 directly pass upon such or similar questions are, as above demonstrated, to the contrary.

Authoritative texts lend no support to the contentions of the Government concerning burden of proof on the issue of bona fides in the license agreements. Stephen, *Digest of the Law of Evidence* (12th ed. 1936) Art. 100, under the sub-topic "He who asserts must prove," states that "Whoever in the course of a judicial proceeding first asserts that a fact exists or *does not exist*, must prove the existence or *non-existence* of such fact." (Italics supplied.) In Article 104, under the sub-topic "Burden of proof as to particular fact," it is said: "The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the burden of proving the fact shall lie on any particular person; but the burden may in the course of a case be shifted from one side to the other, and in considering the amount of evidence necessary to shift the burden of proof the Court has regard to the opportunities of knowledge with respect to the fact to be proved which may be possessed by the parties respectively." In 9 Wigmore, *Evidence* (3d ed. 1940) §§2485-6, the author points out that the determination of the propositions of persuasion which are assigned to a particular party in litigation as a prerequisite to the action of a court is made "first and broadly, by the *substantive law*, which fixes the groups of data that enter into legal relations and constitute rights and duties, and, secondly and more in detail, by the *laws of pleading and procedure*, which further group and subdivide these larger groups of data, and assign one or another sub-group to this or that party as prerequisites of the tribunal's action in his favor." Of course, as further pointed out by the author, "the groupings defined by the substantive law and the further subdivision by the law of pleading do not necessarily end the process of apportionment by law. It arises again *after trial begun* and during the stage of adducing evidence. Even within a single pleading there are instances in which the burden of proof (in the sense of a risk of non-persuasion) may be taken from the pleader desiring action and placed upon the opponent." Wigmore further points out that "The characteristic * * * of this burden of proof (in the sense of a risk of non-persuasion) in legal controversies is that the law divides the process into stages, and apportions definitely to each party the specific facts which will in turn fall to him as the prerequisites of obtaining action in his favor by the tribunal." There is no single principle or rule, according to Wigmore,

which will solve all cases and afford a general test for ascertaining the incidence of the risk of non-persuasion:

8775 It is often said that the burden is upon the *party having in form the affirmative allegation. But this is not an invariable test, nor even always a significant circumstance; the burden is often on one who has a negative assertion to prove;* a common instance is that of a promisee alleging non-performance of a contract. [Italics supplied.]

It is sometimes said that it is upon the party *to whose case the fact is essential.* This is correct enough, but it merely advances the inquiry one step; we must then ask whether there is any general principle which determines to what party's case a fact is essential.

Still another consideration has often been advanced as a special test for solving a limited class of cases, *i.e.* the burden of proving a fact is said to be put on the *party who presumably has peculiar means of knowledge* enabling him to prove its falsity if it is false. This principle has received frequent application in modern statutes making it an offense to pursue a certain occupation without a State *license* or forbidding a certain act unless in personal circumstances justifying an *exception.*

But this consideration furnishes no universal working rule; if it did, then the plaintiff in an action for defamation charging him to be living in adultery should be required to prove that he is lawfully married. This consideration, after all, merely takes its place among other considerations of fairness and experience as a most important one to be kept in mind in apportioning the burden of proof in a specific case.

The truth is that there is not and cannot be any one general solvent for all cases. It is merely a question of policy and fairness based on experience in the different situations. Thus, in most actions of *tort* there are many possible justifying circumstances—self-defence, leave and license, 'volenti non fit injuria,' and the like; but it would be both unfair and contrary to experience to assume that one of them was probably present, and to require the plaintiff to disprove the existence of each one of them; so that the plaintiff is put to prove merely the nature of his harm, and the defendant's share in causing it; and the other circumstances, which would if they existed leave him without a claim, are put upon the defendant to prove. Nevertheless, in malicious prosecution, on the one hand, the facts as to the defendant's good faith and probable cause, which might otherwise

have been set down for the defendant to show in excuse (as the analogous facts in an action for defamation are reserved for a plea of privilege), are here put upon the plaintiff, who is required to prove their non-existence; because as a matter of experience and fairness this seems to be the wiser apportionment. So, on the other hand, in an action for defamation ("false words," in the old nomenclature), it might have been supposed on other analogies that to the plaintiff it would fall to prove the falsity of the defendant's utterance; yet as a matter of fairness, it has in fact been put upon the defendant to prove the truth of his utterance. • • •

There is, then, no one principle, or set of harmonious principles, which afford a sure and universal test for the solution of a given class of cases. The logic of the situation does not demand such a test; it would be useless to attempt to discover or to invent one; and the state of the law does not justify us in saying that it has accepted any. There are merely specific rules for specific classes of cases, resting for their ultimate basis upon broad reasons of experience and fairness. [9 Wigmore, *Evidence*, §2486.]

In 1 Jones, *Evidence in Civil Cases* (4th ed. 1938) § 180, it is stated:

• • • Some early text writers declared the burden of proof to be on the party who asserts the affirmative of the issue or question in dispute. "*Ei incumbit probatio qui dicit, non qui negat.*" (The burden of proof lies upon him who affirms, not him who denies.) However, later writers have questioned the accuracy of the rule, urging that the burden of proof does not depend upon the form of the proposition, but that the burden of proving any given claim or defense rests upon him who asserts it. To some extent, recognition is seemingly given to the former test in a few of the recent cases.

The authorities hold that whoever asserts a claim or defense which is negative in form or depends upon a negative has the burden of establishing the truth of the allegation. But this seems to be only another way of saying that he who affirms must prove; and in cases involving negative propositions the courts seem not to have regarded the form of the issue as material.[31]

31 *Dickson* v. *Uhlmann Grain Co.*, discussed above, is here cited.

The allegations of paragraph 46 of the Government's complaint concerning bona fides in the execution and use of the license agreements are in the form of a negative. This, as noted, will not necessarily relieve the pleader from the burden of proof. The Government does not specifically urge that the facts relating to the issue of bona fides are so
8776 peculiarly within the knowledge of the defendants as to require, as a matter of convenience and fairness, that they be produced by them. The Government could hardly urge this in the instant case, in view of the fact that it, as pointed out in topic I of this opinion, fully availed itself of Rules 43 (b) and 26 to 37 of the Federal Rules of Civil Procedure. As said, most of the Government's evidence came either from the lips of officers or employees of the defendants, or from documents obtained from their files. The officers and employees who testified gave no indication of reluctance to disclose any matters relevant under the issues.

In the course of its contentions with respect to burden of proof, the Government does assert that the burden is upon the defendants to show that in fact the board made by them and controlled by the license agreements was covered by the patents. This, however, is but a subsidiary aspect of the issue of bona fides advanced in paragraph 46, and the Government is not confronted with any undue obstacle, and has not claimed to be, in obtaining evidence on this subject from the defendants' files or officers or employees.

So far as the affirmative allegations of the answers of the defendants USG, Avery and Knode, Certain-teed and Hartley, Celotex and Dahlberg, and Texas are concerned, if the burden of proof on the issue of the bona fides of the patents is properly on the Government, as is herein held, these allegations may be treated as surplusage, or as denials in affirmative form, or as assertions in aid of the denials, which were expressed in the answers of each of these defendants, of the allegations of paragraph 46. "An allegation of fact that is material only as an indirect negative of something to be proved by the other party does not shift the burden of proof. *Starratt* v. *Mullen*, 148 Massachusetts, 570." Per Mr. Justice Holmes in *Javierre* v. *Central Altagracia*, 217 U. S. 502, 508 (1910).[32]

32 In aid of a more generalized argument on burden of proof the Government cites *United States* v. *Eastman Kodak Co.*, 226 Fed. 62 (W. D. N. Y. 1915), *appeal dismissed*, 255 U. S. 578 (1921), and *United States* v. *United States Steel Corp.*, 223 Fed. 55 (D. N. J. 1915), *affirmed*, 251 U. S. 417 (1920). In the first of those cases it was undisputed that the Eastman Kodak Company controlled from 75 to 80% of the entire interstate trade in cameras, film,

(*Continued*)

8777 The basis for injunctive relief under Section 4 of the Sherman Act must be definitely and satisfactorily proved by the Government. *United States* v. *Aluminum Co. of America*, 44 F. Supp. 97, 215 (S. D. N. Y. 1941), *reversed on other grounds*, 148 F. (2d) 416 (C. C. A. 2d, 1945). It has been repeatedly held in suits brought under this statute that there must be a definite factual showing of illegality in the conspiracy, combination, or monopoly charged. *Appalachian Coals, Inc.* v. *United States*, 288 U. S. 344 (1933); *Standard Oil Co.* v. *United States*, 283 U. S. 163, 179 (1931); *Chicago Board of Trade* v. *United States*, 246 U. S. 231, 238 (1918). We hold that this properly includes, in the instant case, the duty of proof, by the Government, of the allegations of paragraph 46 of the complaint as well as of all other allegations of the complaint which are in aid of said paragraph.

Principles of proof: In determining questions of fact a trier of facts (whether jury, court or commission) properly takes two steps: One, determination, from consideration of the evidence, of the underlying or subsidiary (sometimes referred to as the basic) facts; the other, determination from

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plates and photographic paper, and had accordingly secured a monopoly. District Judge Hazel held that under these circumstances the burden rested upon the defendants to prove that this was accomplished by lawful methods—normal processes of growth, mere acquisition of property, or superior merit of products. In *United States* v. *United States Steel Corp.*, Circuit Judge Buffington, speaking for the District Court, ruled that the vast size of the Steel Corporation, the influence and control incident to such size, and the seeming power of the Corporation to crush and its ability to absorb business through its systemized organization, were all factors so associated with monopoly to restrain trade and crush out competition "that we may say that, standing alone as a mere isolated fact, this great company gives one such an impression of monopoly that we feel we may in this inquiry place the burden upon it and its formers to satisfy us by affirmative proof that monopoly was not the purpose for which it was formed, but that it was the normal, regular, and natural outcome of the improvement in steel making, and its concentrated powers were only such as were deemed to be necessary to successful producing and marketing its product." (223 Fed. at 121.) But when the *Steel Corporation* case reached the United States Supreme Court, that tribunal ruled that "we must adhere to the law and the law does not make mere size an offense or the existence of unexerted power an offense." (251 U. S. at 451) In *United States* v. *International Harvester Co.*, 274 U. S. 693, 708 (1927), the Supreme Court ruled that "The law, however, does not make the mere size of a corporation, however impressive, or the existence of unexerted power on its part, an offense, when unaccompanied by unlawful conduct in the exercise of its powers. *United States* v. *Steel Corporation*, 251 U. S. 417, 451." Again in *United States* v. *Swift & Co.*, 286 U. S. 106, 116 (1932), the Court said "Mere size, according to the holding of this court, is not an offense against the Sherman Act unless magnified to the point at which it amounts to a monopoly (*United States* v. *United States Steel Corp.*, 251 U. S. 417; *United States* v. *International Harvester Co.*, 274 U. S. 693, 708), but size carries with it an opportunity for abuse that is not to be ignored when the opportunity is proved to have been utilized in the past."

such facts of the question whether the ultimate facts alleged have been established. And, under the system of law guaranteed by the Constitution, the subsidiary facts must be reached from the evidence and the ultimate facts from the subsidiary facts, not arbitrarily or by assumption or conjecture, or by a process contrary to reason, but according to reason. Inferences must be reasoned inferences, otherwise a case is not decided according to law. Certain principles have been recognized by the courts with reference to the dependability of inferences. They safeguard the integrity of ultimate facts arrived at by inference. These principles, authoritative guides to every trier of fact, whether jury, court or commission, are the following:

(1) An inference to be reasonable must be warranted from all the evidence, otherwise a fact reasonably inferable from a single fact or group of facts might be inconsistent with the totality of proven or conceded subsidiary facts. As said in *National Labor Relations Board* v. *Union Pacific Stages*, 99 F. (2d) 153, 177 (C. C. A. 9th, 1938), where the court interpreted the meaning of Section 10 (e) of
8778 the National Labor Relations Act, providing that "the findings of the Board as to the facts, if supported by evidence, shall be conclusive": "But the courts have not construed this language as compelling the acceptance of findings arrived at by accepting part of the evidence and totally disregarding other convincing evidence." In short, a trier of fact may not ignore a part of the evidence. *National Labor Relations Board* v. *Thompson Products*, 97 F. (2d) 13, 15 (C. C. A. 6th, 1938), the court said in respect of Section 10 (e) of the Act: "It means that the one weighing the evidence takes into consideration all the facts presented to him and all reasonable inferences, deductions and conclusions to be drawn therefrom and, considering them in their entirety and relation to each other, arrives at a fixed conviction. • • • Testimony is the raw material out of which we construct truth and, unless all of it is weighed in its totality, errors will result and great injustices be wrought."

(2) If two equally probable but inconsistent inferences may be drawn from the same facts, a finding of fact cannot reasonably be based upon either of them; in such a situation the evidence is equivocal. *Pennsylvania R. Co.* v. *Chamberlain*, cited in topic I of this opinion. In that case the Court said: "We, therefore, have a case be-

longing to that class of cases where proven facts give equal support to each of two inconsistent inferences; in which event, neither of them being established, judgment, as a matter of law, must go against the party upon whom rests the necessity of sustaining one of these inferences as against the other, before he is entitled to recover. [Citing authorities.]" (288 U. S. at 339) *Cf. Cupples Co. Manufacturers* v. *National Labor Relations Board,* 106 F. (2d) 100 (C. C. A. 8th, 1939).

(3) Where two different inferences may be drawn from undisputed facts, that which is the more probable is the one which must be drawn. *National Labor Relations Board* v. *Sands Mfg. Co.,* 306 U. S. 332 (1939); *Appalachian Electric Power Co.* v. *National Labor Relations Board,* 93 F. (2d) 985 (C. C. A. 4th, 1938).

(4) A fact may not be inferred from a proven fact or facts where unimpeached and uncontradicted testimony consistent with such proven fact or facts but inconsistent with the fact sought to be inferred, is in the record. *Pennsylvania R. Co.* v. *Chamberlain; Cupples Co. Manufacturers* v. *National Labor Relations Board; Foote Bros. Gear & Mach. Corp.* v. *National Labor Relations Board,* 114 F. (2d) 611 (C. C. A. 7th, 1940), *reversed per curiam on other grounds,* 311 U. S. 620 (1940). This proposition was phrased as follows in the *Pennsylvania Railroad* case: "And the desired inference is precluded for the further reason that respondent's right of recovery depends upon the existence of a particular fact which must be inferred from proven facts, and this is not per-
8779 missible in the face of the positive and otherwise uncontradicted testimony of unimpeached witnesses consistent with the facts actually proved, from which testimony it affirmatively appears that the fact sought to be inferred did not exist. * * * A rebuttable inference of fact, as said by the court in the *Wabash Railroad* case [141 Fed. 932, 935 (C. C. A. 8th, 1905)], 'must necessarily yield to credible evidence of the actual occurrence.' And, as stated by the court in *George* v. *Missouri Pac. R. Co.* * * * [213 Mo. App. 668, 674, 251 S. W. 729, 732 (1923)], 'It is well settled that where plaintiff's case is based upon an inference or inferences, * * * the case must fail upon proof of undisputed facts inconsistent with such inferences.'" (288 U. S. at 340-1.) In the *Cupples Co. Manufacturers* case the court stated: "evidence which merely furnishes grounds for suspicion and conjecture proves nothing, and * * * the

Board, like a jury, may not disregard the uncontradicted testimony of unimpeached and credible witnesses." (106 F. (2d) 105.) In the *Foote Bros. Gear & Mach. Corp.* case the court said: "In reaching our conclusion we wish to make it clear that * * * (c) A statement which alone may afford substantial support for a fact finding may lose its weight entirely in the face of uncontradicted facts inconsistent with it." (114 F. (2d) at 622.)

In short the rules of logic and reasoning which are necessary to the accomplishment of the type of adjudication guaranteed under our system of law must be applied by every trier of fact in reaching findings. *Consolidated Edison Co.* v. *National Labor Relations Board*, 305 U. S. 197 (1938); *National Labor Relations Board* v. *A. S. Abell Co.*, 97 F. (2d) 951 (C. C. A. 4th, 1938); *National Labor Relations Board* v. *Bell Oil & Gas Co.*, 98 F. (2d) 406 (C. C. A. 5th, 1938), *rehearing denied*, 98 F. (2d) 870 (1938); *Cupples Co. Manufacturers* v. *National Labor Relations Board*; *Magnolia Petroleum Co.* v. *National Labor Relations Board*, 112 F. (2d) 545 (C. C. A. 5th, 1940).

By substantial evidence is meant more than a mere scintilla; it must do more than create a suspicion of the existence of the fact to be established. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *National Labor Relations Board* v. *Columbian Co.*, 306 U. S. 292, 300 (1939); *Consolidated Edison Co.* v. *National Labor Relations Board*, 305 U. S. 197, 229 (1938); *Gunning* v. *Cooley*, 281 U. S. 90, 94 (1930); *Appalachian Electric Power Co.* v. *National Labor Relations Board*, 93 F. (2d) 985, 989 (C. C. A. 4th, 1938). In the Federal courts substantial evidence rather than a mere scintilla is necessary to support a judgment. *Pennsylvania R. Co.* v. *Chamberlain*, *supra*; *Jackson* v. *Capital Transit Co.* and *Hopkins* v. *Baltimore & Ohio R. Co.*, both cited in topic I of this opinion.

The evidence offered by the Government in the instant case is mostly circumstantial and the subsidiary facts in the case are largely not in dispute; it is in respect of
8780 the meaning of these facts, of the inferences to be drawn from them, that the parties are in contest. Hence the principles above stated are to be borne in mind in considering and determining the issues of fact in the case.

Certain other principles relating to proof of such charges as are involved in the instant case should be stated: A conspiracy is a partnership in the accomplishment of an un-

lawful thing, or of a lawful thing by unlawful means. *Duplex Co.* v. *Deering*, 254 U. S. 443, 465 (1921); *United States* v. *Kissel*, 218 U. S. 601, 608 (1910); *Patterson* v. *United States*, 222 Fed. 599, 630-1 (C. C. A. 6th, 1915), *cert. denied*, 283 U. S. 635 (1915). Under the Sherman Act a conspiracy need not involve an overt act, although the commission of such an act or acts may tend to characterize a conspiracy in respect of time and place. The "Sherman Act punishes the conspiracies at which it is aimed on the common law footing—that is to say, it does not make the doing of any act other than the act of conspiring a condition of liability." *Nash* v. *United States*, 229 U. S. 373, 378 (1913). *Cf. United States* v. *Socony-Vacuum Oil Co.*, 310 U. S. 150, 224-6 (1940), *rehearing denied*, 310 U. S. 658 (1940). A conspiracy may be proved by circumstantial evidence. *Eastern States Lumber Ass'n* v. *United States*, 234 U. S. 600, 612 (1914); *Baush Machine Tool Co.* v. *Aluminum Co. of America*, 72 F. (2d) 236, 241 (C. C. A. 2d, 1934), *cert. denied*, 293 U. S. 589 (1934). As stated in the latter case "Conspiracies are seldom capable of proof by direct testimony and may be inferred from the things actually done and from the circumstances." Evidence as to conspiracy is, of course, to be considered as a whole—not piecemeal. Although separate acts of alleged conspirators may, when viewed alone, seem innocent, they may, when looked at as parts of a general scheme, take on an illegal aspect. *United States* v. *Reading Co.*, 226 U. S. 324, 357 (1912), *modification*, not affecting this holding, 228 U. S. 158 (1913); *United States* v. *Patten*, 226 U. S. 525, 544 (1913).

The rule concerning admissibility of declarations of alleged co-conspirators: Much of the testimony introduced by the Government in this case, and most of the exhibits, consist of declarations of alleged co-conspirators. It is necessary therefore to bear in mind the rules concerning admissibility of such declarations. Ordinarily the law holds a person liable only by reason of his own acts or utterances. But where two or more persons act in concert, with a common purpose, the acts and declarations of one during the existence, and in pursuance, of the conspiracy, are held in law to be the acts and utterances of the others. As said in *Connecticut Mutual Life Ins. Co.* v. *Hillmon*, 188 U. S. 208, 218 (1903), "'every act and declaration of each member of the conspiracy, in pursuance of the original concerted plan, and with reference to the common object, is, in contemplation of law, the act and declaration of them all, and is
8781 therefore original evidence against each of them."

But upon the application of this rule there are definite limitations which flow from its foundation, to wit, one person may be held liable for the acts and utterances of another *if the two are acting in concert and to a common purpose.* In order to render admissible as against one member of an alleged conspiracy the acts or declarations of another, the *existence of the conspiracy charged and the connection of the conspirators with it must be shown independently.* It is also necessary that the acts and declarations shall have some relation to the execution of the common purpose; declarations must be more than mere narratives. In *Winchester & Partridge Mfg. Co.* v. *Creary,* 116 U. S. 161, 166 (1885), a common purpose to defraud other creditors of a vendor by a sale of property was charged against the vendor and a vendee-creditor. The jury was permitted to consider, as against the vendee, declarations of the vendor, made after the sale, as to its true character. The Supreme Court held this error, saying: "it is sufficient to say that such declarations are not admissible against the vendee, unless the alleged common purpose to defraud is first established by independent evidence, and unless they have such relation to the execution of that purpose that they fairly constitute a part of the *res gestae.*" In *Thomas* v. *United States,* 57 F. (2d) 1039, 1041-2 (C. C. A. 10th, 1932), the limitations were described thus:

To render evidence of the acts or declarations of an alleged conspirator admissible against an alleged co-conspirator, the existence of the conspiracy must be shown and the connection of the latter therewith established. Pope v. United States (C. C. A. 3) 289 F. 312, 315; Kelton v. United States (C. C. A. 3) 294 F. 491, 495; Isenhouer v. United States (C. C. A. 8) 256 F. 842; United States v. Goldberg, 7 Biss. 175, Fed. Cas. No. 15,223; United States v. McKee, 3 Dill. 551, Fed. Cas. No. 15,686; Burns v. United States (C. C. A. 8) 279 F. 982, 986; Dolan v. United States (C. C. A. 9) 123 F. 52; Stager v. United States (C. C. A.) 233 F. 510.

Declarations made by one conspirator to another are not competent evidence to establish the connection of a third person with the conspiracy. Kuhn v. United States (C. C. A. 9) 26 F. (2d) 463; United States v. McKee, supra.

The existence of the conspiracy charged cannot be established against an alleged conspirator by evidence of the acts or declarations of his alleged co-conspirator done or made in his absence. Hauger v. United States (C. C. A. 4) 173 F. 54, 57; United States v. Richards (D. C. Neb.) 149

F. 443; United States v. Goldberg, supra; United States v. McKee, supra.

In *Stager* v. *United States*, 233 Fed. 510, 513 (C. C. A. 2d, 1916), the court said:

"* * * When a conspiracy is once established acts and admissions of any one of the conspirators in pursuance of the conspiracy, and while it continues, are admissible against the others, upon the theory that the conspirators are agents for one another in the common enterprise. Connecticut Mutual Life Insurance Co. v. Hillmon, 188 U. S. at page 218, 23 Sup. Ct. 294, 47 L. Ed. 446. But the preliminary question whether sufficient evidence of a conspiracy has been adduced must always be answered by the court in the affirmative or the general rule of evidence excluding hearsay will render an admission of one of the conspirators inadmissible against the others. * * *

In *Mayola* v. *United States*, 71 F. (2d) 65, 67 (C. C. A. 9th, 1934), the court ruled that the declarations of one coconspirator to another are not competent to establish the connection of a third person with the conspiracy. It quoted from *Nibbelink* v. *United States*, 66 F. (2d) 178, 179
8782 (C. C. A. 6th, 1933), as follows: "'* * * Before the declarations of coconspirators can be received in evidence against one charged with participating in the conspiracy, it must be shown by independent evidence that the conspiracy existed and that the accused was a party to it at the time the declarations were made.'" To the same effect see *United States* v. *Renda*, 56 F. (2d) 601 (C. C. A. 2d, 1932). In *Logan* v. *United States*, 144 U. S. 263, 309 (1892), the Supreme Court expressly ruled against the use of declarations concerning past events, saying that "the defendants on trial could not be affected by the admissions made by others of the alleged conspirators after the conspiracy had ended" since such declarations "were not in execution or furtherance of the conspiracy, but were mere narratives of a past fact." See also *Harrington* v. *United States*, 267 Fed. 97 (C. C. A. 8th, 1920); *Oras* v. *United States*, 67 F. (2d) 463 (C. C. A. 9th, 1933).

Declarations are, strictly, hearsay, being made out of court and without the sanction of an oath, but are received in evidence as in the nature of admissions of a party. They may, of course, in some instances be verbal parts of an act which is itself material and relevant in a case, and in such event admissible as original evidence. Hughes, *Evidence* (1907) Ch. XVII, §6. "If a declaration has its force by it-

self, as an abstract statement, detached from any particular fact in question, depending for its effect on the credit of the person making it, it is not admissible in evidence. * * * But when the act of a party may be given in evidence, his declarations made at the time, and calculated to elucidate and explain the character and quality of the act, and so connected with it as to constitute one transaction, and so as to derive credit from the act itself, are admissible in evidence. * * * Such a declaration derives credit and importance as forming a part of the transaction itself." The quotation is from Justice Fletcher, in *Lund* v. *Tyngsborough*, 9 Cush. 36, 42 (Mass. 1851). But the acts and explanatory declarations of one alleged co-conspirator would be admissible as against others only subject to the limitations above expressed.

State v. *Trocchio*, 121 Me. 368, 117 Atl. 460 (1922), is urged by the Government as rejecting the limitation that declarations of one alleged co-conspirator are not admissible against others until there has been independently proved the existence of the conspiracy and the participation of the others therein. In that case, involving a conspiracy to kill, exceptions were taken to the admission as against one defendant (Philomena Trocchio) of letters and confessions of others. The court said:

* * "The defendant, Philomena, however, strongly protests that the letters and confessions were not admissible as tending to prove participation in the conspiracy on her part, inasmuch as a conspiracy must first be established before the acts or words of alleged co-conspirators can become admissible.

8783 We do not understand the rule of the admission of testimony, in proof of a conspiracy, to be as limited as above stated and claimed. We think the true rule, as shown by ample authority is, that the acts and words of all parties alleged to be participants in the conspiracy, as well as all other testimony, are admissible in the discretion of the court, for the purpose of proving the fact of a conspiracy, but are not to be taken into consideration against any one of the parties concerned, until, from the evidence thus admitted, the fact of a conspiracy is proved; after which the acts and words of each co-conspirator, whenever done or whenever said, in furtherance of the common purpose are admissible against all the alleged conspirators, upon the ground that the act of one is the act of all. [121 Me. at 375, 117 Atl. at 462.]

Reading of the entire opinion in that case, however, indicates that what was really in the mind of the court in its ruling was the order of evidence. The court states, for example, that it is claimed by the defendant Philomena Trocchio that none of the evidence disclosed by the letters between her daughter Elizabeth and Nick Vetrano (the other defendant), or their confessions, were admissible against her until a conspiracy in which she was a participant was proved. In respect of this the court said: "Such is the general rule, but the exceptions are so numerous that in nearly all the jurisdictions of this country *the order of introducing all testimony* upon conspiracy charges, is left to the discretion of the presiding Justice." (Italics supplied.) (121 Me. at 378, 117 Atl. at 463-4) *Spies* v. *The People*, 122 Ill. 1, 238-9, 12 N. E. 865, 980, 17 N. E. 898 (1887), *petition for writ of error dismissed*, 123 U. S. 131 (1887), cited by the Government also relates to the order in which evidence is received, within the discretion of a trial court, in a conspiracy case. It is, of course, true that a trial judge may in his discretion receive evidence concerning declarations of alleged co-conspirators prior to proof of the existence of the conspiracy and of the participation of the other defendants therein, subject to a promise, by the party offering the declarations, of ultimate independent proof of the conspiracy and the connection of the defendants therewith. Such order of proof was permitted in the instant case.

The Government asserts that the law requires slight evidence only of connection of an alleged conspirator with the conspiracy, citing *Galatas* v. *United States*, 80 F. (2d) 15 (C. C. A. 8th, 1935), *cert. denied*, 297 U. S. 711 (1936); *Van Riper* v. *United States*, 13 F. (2d) 961, 967 (C. C. A. 2d, 1926), *cert. denied sub nom. Ackerson* v. *United States*, 273 U. S. 702 (1926); *Roberts* v. *United States*, 248 Fed. 873, 880 (C. C. A. 9th, 1918), *cert. denied*, 247 U. S. 522 (1918); and *Gernert* v. *United States*, 240 Fed. 403 (C. C. A. 9th, 1917). In the *Gernert* case the evidence was not slight. In the *Van Riper* case it is held that there is no requirement that each of several co-conspirators be shown to have had an *equal* part in forming and carrying out the conspiracy. It is added that if it be shown that he subsequently adopted the conspiracy with knowledge of its design and purpose, declarations may be admissible against a conspirator, even though he had nothing to do with the conspiracy at its inception. This is the ruling in the *Roberts* case, the

8784 court there making the qualification, however, that the adoption of the conspiracy must be in its original design and purpose. In *Galatas* v. *United States*, it is said that where a conspiracy is established "but slight evidence connecting a defendant therewith may still be substantial, and if so, sufficient." (80 F. (2d) at 224.) But none of these cases indicates that the "slight evidence" which may be sufficient to connect a defendant with a conspiracy, or to show that he adopted it, can be insubstantial. *Wilson* v. *United States*, 190 Fed. 427, 438 (C. C. A. 2d, 1911), *affirmed*, 221 U. S. 361 (1911), is cited as holding that a party may be connected with a conspiracy by evidence which if standing alone would be insufficient to establish the existence of the conspiracy. But the case does not hold that the connecting evidence may itself be insubstantial.[33]

The Government also relies upon *Cummings* v. *United States*, 15 F. (2d) 168 (C. C. A. 9th, 1926). That case involved a conspiracy to violate the National Prohibition Act. The defendants relied upon the proposition that the formation of a conspiracy could not be established "by declarations of the defendants." The court said that it was true that a declaration by a single defendant would not be competent as against the others or sufficient in itself to prove the conspiracy, but that if the defendants "each and all, though separately, admitted or declared the existence of the alleged conspiracy, such declarations would be competent, and, taken together with the conduct of the parties and other circumstances, might very well constitute the most convincing evidence." (15 F. (2d) at 169.) This case is cited in *Hoeppel* v. *United States*, 66 App. D. C. 71, 76, 85

33 The *Van Riper* case, above cited, contains a good statement of the rule concerning the admissibility of declarations in conspiracy cases: "Such declarations are admitted upon no doctrine of the law of evidence, but of the substantive law of crime. When men enter into an agreement for an unlawful end, they become ad hoc agents for one another, and have made 'a partnership in crime.' What one does pursuant to their common purpose, all do, and, as declarations may be such acts, they are competent against all. Hitchman C. & C. Co. v. Mitchell, 245 U. S. 229, 249, 38 S. Ct. 65, 62 L. Ed. 260, L. R. A. 1918C, 497, Ann. Cas. 1918B, 461; Conn. Mut. L. Ins. Co. v. Hillmon, 188 U. S. 208, 23 S. Ct. 294, 47 L. Ed. 446. For this reason, merely narrative declarations are not competent. But it is also a part of the law of joint crimes that, when a party joins an existing group already so engaged, he assumes responsibility for all that has been done theretofore. Anonymous, 6 Mod. 43; People v. Mather, 4 Wend. (N. Y.) 229, 258, 259, 260, 21 Am. Dec. 122; Comm. v. Rogers, 181 Mass. 184, 194, 63 N. E. 421; 1 Russell on Crimes (8th Ed.) 190; 1 Bishop, New Criminal Law, §642. For this reason all that was done before he entered may be used against him, but obviously not what was done after he left, Logan v. U. S., 144 U. S. 263, 309, 12 S. Ct. 617, 36 L. Ed. 429; Brown v. U. S., 150 U. S. 93, 14 S. Ct. 37, 37 L. Ed. 1010." (13 F. (2d) at 967.)

F. (2d) 237, 242 (1936), *cert. denied,* 299 U. S. 557 (1936), *rehearing denied,* 299 U. S. 622 (1936). But neither the latter case nor *Cummings* v. *United States* alters the general rule with respect to the admissibility of declarations. In the *Cummings* case, a criminal case, the declarations were apparently separate *confessions,* not merely admissions of a party in the usual sense of those words in civil cases.

The Government cites *Hitchman Coal & Coke Co.*
8785 v. *Mitchell,* 245 U. S. 229, 249 (1917), wherein the Court says: "In order that the declarations and conduct of third parties may be admissible in such a [conspiracy] case, it is necessary to show by independent evidence that there was a combination between them and defendants, but it is not necessary to show by independent evidence that the combination was criminal or otherwise unlawful. The element of illegality may be shown by the declarations themselves." Cited also are *Van Riper* v. *United States, supra; Boyle* v. *United States,* 259 Fed. 803, 808 (C. C. A. 7th, 1919); *United States* v. *American Column & Lumber Co.,* 263 Fed. 147, 152 (W. D. Tenn. 1920), *affirmed,* 257 U. S. 377 (1921); but none of these cases discusses this aspect of the declarations rule. There is, moreover, a limitation upon the independent evidence requirement which the statement in the *Hitchman* case is not to be read as negating. The independent evidence which must be introduced by the Government before declarations of one co-conspirator can be used to bind another must prove *the very combination charged.* Declarations cannot be used to prove the common purpose, or to enlarge the scope of any common purpose which has been proved. Without this limitation, one person might be bound by the declarations of another disclosing an illegal undertaking quite different from an innocent transaction in which the two had been jointly engaged. This limitation is recognized in *United States* v. *Food and Grocery Bureau,* 43 F. Supp. 966 (S. D. Cal. 1942). That was a criminal prosecution for violation of Section 1 of the Sherman Act against the Food and Grocery Bureau and others, charging a conspiracy to stabilize retail prices of food and grocery products. The testimony for the Government showed that what started as an effort on the part of persons engaged in the food and grocery business to secure the enforcement of the Unfair Trade Practices Act of California gradually developed into a price fixing and stabilization scheme. Thus, the starting

point of the conspiracy dealt with a legal venture, *i.e.*, the association of various persons to assist in the enforcement of a law. Evidence consisting of declarations showed that the association departed from the original object and started illegally to fix prices. At the conclusion of the Government's case it moved to apply to all of the defendants evidence which had been received subject to later connection as to certain defendants. In denying this motion in respect of several defendants who were not shown, by independent proof, to have been parties to the unlawful part of the plan, the court said:

But unless the passage from the legal to this illegal object is brought home individually to the various defendants, mere membership in the Bureau, mere contributions toward its support, or the collection of the tax on milk by wholesalers from retailers for the use of the Bureau, are not sufficient to charge the individual members—be they persons or groups—with these acts.

Nor, assuming that the Secretary of the Bureau, the Bureau as a corporate entity, and the directors, who participated in its deliberations, knew of the activities, can this illegal object be charged to the organizations of which some of the directors were also members, unless it appear that the organization, *as such,* knew and sanc-
8786 tioned the acts of their representatives. Any other attitude would result in grave injustice. *Some of the defendant organizations are co-operatives—groups consisting of hundreds of petty tradesmen. It would be wholly unfair to charge this group with the actions of some of their officers in attempting to bind them to an illegal act, unless it be shown that the matter was brought up and explained at some meeting and that the nature of the activity was clearly understood by the membership. Our law abhors crime by association. To say that a hundred grocers, bound together in a cooperative, should be found guilty of the violation of a statute of the United States because one or two of their officers or directors were also on the Board of the Bureau, would be applying to criminal law the civil law of agency. This cannot and should not be done.*

* * * * *

I am of the view that the evidence does not show that any of these individual or group defendants, as to whom the motion is denied, *engaged in any scheme of price-fixing or joined others in carrying out an intention to fix retail prices in obstruction of interstate commerce.*

To amplify this further would require a repetition or application to each of these defendants of the legal norms discussed. This is unnecessary. I believe that the application of the principles to each of them is obvious. Either their part was insignificant, or there is no evidence of any knowledge on their part that anyone was doing aught but engage in a legal activity. There is no evidence that they participated in any act of an illegal nature, such as coercion, threats, intimidation, and the like, in carrying out the objects for which they may have associated themselves with the Food and Grocery Bureau, at its inception. *You cannot ground a conspiracy upon the doing of a lawful act, unless the means are unlawful.* The effort to support the Unfair Practices Act was not accomplished by any unlawful means, so far as these particular defendants are concerned. [Italics supplied.] [43 F. Supp. at 973.]

An effort to bind one party by the declarations of another merely because they had a contract which itself did not involve any common or joint undertaking was rejected in *Winchester & Partridge Mfg. Co.* v. *Creary, supra.*

IV

Evidence of Conspiracy Outside the Declarations

Under the limitation stated in topic III, unless there is evidence, outside the declarations, of the conspiracy charged, the declarations are binding only upon the declarant, not upon other members of the alleged conspiracy. The conspiracy charged in the complaint is a conspiracy to accomplish the restraints of trade alleged in paragraph 45 (*viz.*, the fixing of prices on gypsum board made and sold by the defendants, improper standardization of board, fixing of prices on unpatented materials, improper control of distribution of gypsum products, and fixing of the prices at which manufacturing distributors would resell gypsum board) by the execution, as alleged in paragraph 46, of patent license agreements which are not bona fide agreements intended to secure to USG the pecuniary reward of its patent monopoly, but which were entered into only to give color of legality to a combination to restrain trade as alleged.

The Government asserts that the conspiracy is proved by evidence, outside the declarations, to the effect that: (1) In 1927-1929 there was a price war in the gypsum industry; due to litigation and competition from open-edge board prices in some localities were as low as cost, and

for some manufacturers business was no longer profitable. (2) On May 21, 22 and 23, 1929, Avery, Henning and MacLeish (counsel), of USG; Reeb, of Niagara; Baker, of National; Kelley, of Kelley; Neale and Channing, of Atlantic; C. O. Brown and Whittemore, of Certain-teed; Holland, of Universal; and Ebsary, Lenci and Rippey (counsel), of Ebsary, met by previous arrangement in Chicago in relation to the possible settlement of the USG
8787 patent litigation and the issuance of licenses by USG.[34] Avery and MacLeish stated to the others

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34 Following is a list of the full names and the business or professional identity of all of the persons referred to in this opinion. Hereafter in the text for convenience surnames only will be used except where two persons have the same surnames, in which event given names or initials will be used for differentiation. In the following list the letter (W) after a name indicates that such person was a witness.

Avery, Sewell L., USG, Chairman of Board since 1936; President 1905-1936.

Baker, Melvin H., National, President.

Bayer, Erick Christian, Foreign Patentee.

Black, Arthur R. (W), Celotex, Supervisor of Sales since 1939; Sales Manager of American 1907-1939.

Blagden, Augustus G. (W), Beaver, President 1923-1928.

Brown, Claude Oliver (W), Certain-teed, Vice-president 1929-1937; General Sales Manager 1925-1929.

Brown, George M. (W), Certain-teed, Chairman of Board of 1936-1937; President 1904-1935.

Channing, M. M., Atlantic, Counsel.

Chism, H. E. (W), Texas, General Manager since 1937. Assistant to the General Manager 1922-1932.

Coffin, W. E., Certain-teed.

Dahlberg, Bror G. (W), Certain-teed, Chairman of Board since 1938. Celotex, President since 1921.

Diegel, Ed. H., Ebsary, General Sales Manager.

Ebsary, Frederick G., Ebsary, President.

Fuller, Willard P., Atlantic, President.

Gloyd, Samuel M., Texas.

Griswold, Frank J. (W), American, Vice-president and General Manager.

Haggerty, J. F., National, President.

Hansen, Emil (W), Paragon Plaster Co., President and Treasurer.

Hartley, Henry J., Certain-teed, President.

Henley, Warren, Certain-teed, Merchandise Manager.

Henning, C. F., USG, Vice-president in charge of sales.

Higgins, Charles A. (W), Quality Materials Co. since 1937; Central Sales Manager of National 1929-1937.

Hite, C., Universal, Research.

Holland, Eugene (W), Universal, President and General Manager and Co-Receiver.

Ingberg, S. H. (W), Bureau of Standards.

Kelley, Stephen J., Kelley, President.

Kellogg, Willard H., Jr. (W), Connecticut Adament Plaster Co., Secretary and Treasurer.

Kling, John A., American, Chairman of Board.

(*Continued*)

present that the *General Electric* decision sanctioned
8788 the granting of patent licenses containing provision for sale of the patented product at minimum prices to be fixed by the licensor, and explained the terms of the proposed licenses. Certain-teed, Ebsary and Niagara at this time signed their May 1929 licenses under the Utzman and other patents. National had signed its license on May 16. The first price bulletin under these licenses was then issued. Thereafter Avery explained the advantages of the Roos foam invention and suggested the taking of additional licenses under the patent for this. There were further representations during the summer of 1929 as to the advantages of the Roos foam invention, and of the Haggerty and Hite starch patents which were owned by Universal but were to be sold to USG. As evidence, outside the declarations, of the conspiracy charged, the Government relies also upon (3) the fact of execution of the 1926-1927, May 1929, November 1929, metallized board and perforated lath license agreements; and upon (4) the terms and provisions of these licenses. These terms are outlined in the statement of facts at the outset of this opinion and need not be repeated here.

These items do not prove the conspiracy charged because they do not show that the licenses were not bona fide or that they were executed to accomplish restraints outside

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Knode, Oliver M., USG, President.

Lenci, George N. (W), Ebsary, Vice-president.

MacLeish, John E., USG, Counsel.

McCormack, Harry G. (W), American Cyanamid Corp. since 1928; prior thereto, Assistant Sales Manager of Structural Gypsum Corp., and prior thereto with USG, National and American.

McCrady, J. H., American, President.

Miller, Frank M., Board Survey, Executive Secretary.

Neale, Laurence I. (W), Atlantic, Vice-president.

Nelson, Robert M. (W), Certain-teed, Vice-president and Treasurer.

Reeb, M. A., Niagara, President.

Rippey, Harlan W., Ebsary, Counsel.

Roos, Carlisle K., USG, Director of Research.

Spease, J. R. (W), Fairmont Wall Plaster Co.

Spencer, H. Dorsey (W), Certain-teed, Counsel.

Stromquist, Walter G. (W), Universal, Eastern Sales Manager.

Tomkins, Frederick (W), Newark, President. Calvin Tomkins Co., Vice-president. President of Kelley 1937-1939.

Utzman, Clarence W., USG, Inventor-Employee, Research.

Van Hagan, H. H., Certain-teed, Production Department.

Whittemore, Audenreid (W), Certain-teed, Executive Vice-president.

Williams, C. E., National.

the proper limits of a patent monopoly. The low prices in 1927-1929 may have been an inducement to the execution of licenses under which prices on patented board would be fixed by the licensor at presumably profitable levels, since the licensor was also a manufacturer; *non constat* that it was an inducement to execute non-bona fide licenses with intent to accomplish unlawful restraints of trade. The meeting, representations and negotiations mentioned prove nothing as to the alleged non-bona fide character of the licenses or as to the alleged illegal objectives thereof; nor does the fact of execution of the licenses, unless it be assumed, contrary to the holding in topic II, that a plurality of patent licenses is unlawful. The provisions of the licenses evidence nothing as to alleged non-bona fides of the licenses or as to their asserted illegality of purpose. As is shown in topic II similar provisions were approved in the *General Electric* case. That the fixing by USG of the minimum prices to be charged in sales of patented board by the licensees was provided for in the licenses is no evidence of wrongful purpose unless it is otherwise shown that the licenses were sham. The Government emphasizes the provisions for recognition of the validity of USG's patents, for the marking of seconds, for the payment of royalty on all board sold whether patented or not, and the "most favored nation" clause. Recognition of the validity of the patents is no evidence that the licenses were not executed bona fide; indeed, without more, it is evidence that they were. The provisions for marking seconds and for royalty are no
8789 evidence that the licenses were sham or that they were executed for the accomplishment of illegal objectives; the one was to avoid confusion between first grade and defective board; the other was a means of measuring the amount to be paid for the right of the licensees to use the patents. The "most favored nation" clause is no evidence that the licenses were not executed in good faith. Given a right to execute a plurality of licenses, a patentee may properly draft them with uniform terms and with such a provision against future discrimination by the licensor between the licensees.

The Government contends further that the actual operations of the defendants after the licenses were signed were carried beyond the proper limits of the patent monopoly, and that this shows that the licenses were executed with a wrongful intent—since it may be taken for granted that the manufacturing and sales activities were designed. But

there is no evidence to support this contention. It is demonstrated in topic VI of this opinion that the evidence fails to establish that there was resale price fixing, improper control of distribution, fixing of prices on unpatented products, or improper standardization of gypsum board. The discussion of those topics will not be duplicated here. That USG did fix, by the issuance from time to time of bulletins, the minimum prices at which patented board should be sold, and that in the large the licensees conformed to these prices, is not in dispute. But to infer from this that the licenses were executed with a wrongful purpose is either to assume, rather than to prove, that they were sham, or to reason from a false premise, that is to say, from a premise that the fixing by a licensor under bona fide licenses of the minimum price on sales of the patented product is illegal. The *General Electric* decision holds that this is not illegal.

In considering the question whether there is evidence, outside the declarations, of the conspiracy charged, the court has taken into account the contention of the Government that the declarations may themselves be considered, as admissions, under the theory of *Cummings* v. *United States*, referred to in topic III. But, as pointed out there, the so-called separate "admissions" in that case were really confessions which admitted and declared the existence of the conspiracy. None of the declarations in the instant case constitutes a confession of the conspiracy charged.

It is concluded that there is no evidence, outside the declarations, of the conspiracy charged. The court now proceeds to consider, on the merits, the two principal questions of fact in the case, and in examining the evidence will regard the declarations as binding only upon the declarant.

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V

The Bona Fides of the Patent License Agreements

The first of the two questions of fact in the case is, as stated at the close of topic II: Were the license agreements entered into by the defendants not as bona fide patent license agreements but to give color of legality to a combination to restrain trade in violation of the Sherman Act? The execution of the license agreements, their terms, and the litigation out of which, in the large, they grew, have been described at the outset of this opinion. But further facts

connected with the execution and operation of the contracts must be alluded to in order that the conflicting contentions of the parties in respect of the questions of fact may be understood and resolved. It is to be borne in mind that although there are conflicting contentions, this is not a case of conflicting evidence in the usual sense of those words. All of the evidence before the court was introduced by the Government, none by the defendants. There was, of course, cross-examination by the defendants, and items of evidence thus elicited are in some part relied upon by the defendants; but those items are out of the mouths of the Government's witnesses, and their credibility is not assailed by either the Government or the defendants, except in the instance of one witness the dependability of whose testimony, in connection with the second issue of fact, is questioned by the defendants. Since many of the witnesses were officers of the defendant companies, the Government was free, under Rule 43 (b) of the Federal Rules of Civil Procedure, to interrogate them by leading questions, and it did so. Under the same rule the Government was free to contradict or impeach such witnesses. This it did not do. The conflicting contentions of the parties on the issues of fact in the case are not as to what the evidence is, or as to what are the basic facts shown by the evidence; the dispute is as to the inferences to be drawn from the basic facts and, therefore, as to what the ultimate facts are. *Cf. Saginaw Broadcasting Co.* v. *Federal Communications Commission,* 68 App. D. C. 282, 287, 96 F. (2d) 554, 559 (1938); *cert. denied; sub. nom. Grass* v. *Saginaw Broadcasting Co.,* 305 U. S. 613 (1938).[35] Accordingly the principles set forth in topic III in respect of the drawing of inferences are to be regarded.

8791 It is to be noted that the first question of fact—were the license agreements entered into by the defendants not as bona fide license agreements but to give color of legality to a combination to restrain trade in violation of the Sherman Act—has two aspects: One, were the agreements executed as bona fide agreements, intended to

35 In that case it is pointed out that the process which a court or a commission properly follows in reaching a decision on the facts includes four parts: (1) Evidence must be taken and weighed both as to its accuracy and as to its credibility; (2) from consideration of this evidence a determination of facts of a basic or underlying nature must be reached; (3) from these basic facts the ultimate facts, usually in the language of an applicable statute or principle of law, are to be inferred, or not, as the case may be; (4) from this finding the decision will follow on the application of the statutory or judicially enunciated criterion.

bind each party to the premises made therein, or were they intended by the parties only as sham agreements to disguise illegal purposes; the other, were the agreements executed with intent to gain more than appears on their face—to gain objectives beyond the proper limits of a patent monopoly? Each of these two aspects of the question merges into the other. If the license agreements were intended not as binding, but only as sham, agreements, then in equity they would be contracts in form only, not in substance, and the parties to them would be without patent protection so far as price fixing is concerned, *i.e.*, USG would have no warrant to fix prices on sales of board by the licensees, or they to abide by prices so fixed; and if the agreements, even though executed as binding instruments and in that sense bona fide, were intended to gain more than appears on their face, to gain objectives beyond the proper limits of a patent monopoly, then they would, in a broad sense, not be bona fide; and if so intended, even if not so applied, the agreements would be illegal—because a Sherman Act conspiracy need not involve an overt act. Although the two aspects of the first question of fact do, as said, merge into each other, they will, for convenience, be discussed separately.

Were the license agreements executed as bona fide agreements intended to bind each party, or were they intended only as sham agreements to disguise illegal purposes? The evidence introduced by the Government fails to prove that the agreements were intended only as sham agreements to disguise illegal purposes; on the contrary it shows that they were executed bona fide.

All of the license agreements, except that of July 29, 1926, between USG and Beaver, and that of September 17, 1926, between USG and Universal, were executed after the decision in the *General Electric* case on November 23, 1926; and *Bement* v. *National Harrow Company* had long been decided (May 19, 1902) before the Beaver and Univeral agreements were signed. The terms and conditions of the licenses in the instant case are similar to those in the General Electric-Westinghouse license. This has been shown in topic II of this opinion. It thus appears that the license agreements in the instant case, except those executed in 1926 by Universal and Beaver, were patterned upon the *General Electric* decision and the license agreements which in that case were sanctioned by the Supreme Court; and the Universal and Beaver licenses were ap-

parently executed upon the faith of the *Bement* decision. Both that case and the *General Electric* decision, as pointed out in topic II, sanction price fixing by a patentee
8792 on a product manufactured and sold under patent licenses granted by him. The licensees in the instant case had been advised that license agreements giving price control to the licensor were proper and that they had a right to enter into them under the patent laws. Griswold of American testified in this respect that in 1926 he understood that the law granted to USG the right to fix prices under its (Utzman) patent. Specifically, he said that his attorneys had advised him that he had a right to enter into a license agreement under the patent laws, and that if Avery saw his way clear to grant a license, he had a right to do so and to tell his licensees the price at which they should sell the patented product. Griswold said that there was no secret about that—that everybody seemed to know it at that time. He testified similarly in reference to the Birdsey partially closed-edge patent. Lenci of Ebsary testified that at the Palmer House in Chicago in May, 1929, when representatives of his company, National, Certain-teed and Niagara signed the May 1929 agreements, Avery stated that under the *General Electric* decision USG had a right to offer the licenses; and Lenci said further that Rippey, counsel for Ebsary, advised that it was lawful under the *General Electric* decision to take out a license under which USG would fix the prices of the patented product. It is implied in the testimony of George M. Brown of Certain-teed that he understood that price fixing by a patent licensor was lawful. It may properly be inferred that Holland was of the view that the USG license to Universal was lawful, since the sale transaction of the Haggerty and Hite patents by Universal to USG, of which the license was a part, was approved by the seven United States District Courts in which the Universal receiverships were pending. All of this evidences good faith in the execution of the licenses.

All of the license agreements subjected the licensees to the payment of substantial royalties; and many of them were entered into, as appears from the statement of facts at the outset of this opinion, in settlement of infringement litigation and in consideration of the payment of substantial damages. This affirmatively evidences good faith and negatives sham and subterfuge. It is not reasonably to be thought that licensees would agree to pay, and actually

pay, substantial sums of money in royalties and damages if the agreements were entered into only as a cloak to disguise illegal conduct. If the agreements had been sham, the royalties would have been sham. Some such device as royalty rebates would have been provided for, as in the *Standard Sanitary* case, referred to in topic II, where the royalties were based not upon selling price but upon a flat figure per unit, 80% of which was returnable to the licensee if he abided by all of the provisions of his license. This case is discussed in greater detail in topic VIII.

8793 Commencing as early as 1926, when the Beaver license was negotiated, USG offered terms of settlement of infringement claims and a license to the various board manufacturers, and throughout all of its negotiations with the various companies USG insisted upon these same terms which were: payment of damages for infringement, acknowledgment of the validity of USG's patents, payment of royalties, and the right in USG to fix prices upon board made and sold under its patents. American attempted to get better terms but Avery remained firm that American should either pay in full for past infringement and for future use of the patents, or go without the benefit of using them. On May 18, 1929, shortly prior to the execution in Chicago, on or about May 22, of the license agreements with Ebsary, Certain-teed and Niagara (National had signed its agreement on May 16), Avery wired to Ebsary of Ebsary, George M. Brown of Certain-teed, Baker of National, Holland of Universal, and Gloyd of Texas, that Kling of American had sent in a contract with material changes unacceptable to USG, and that unless each of the other companies was willing to sign its proposed license without American the meeting with Avery in Chicago was futile. If Avery, as arch conspirator in an arrangement to use patent licenses as a "coverup" for illegal purposes and acts, was interested only in such purposes and acts, including price fixing, his insistence upon the execution of licenses, each of which called for payment of damages and royalties and recognition of patent validity, as well as the right in USG to fix prices of sale by the licensees of the patented product, is not understandable. In a sham transaction there would hardly be bargaining over terms, or rigid insistence by the licensor upon the same terms for all settlements and licenses. Avery's conduct in insisting upon the same terms to all licensees might be consistent with misinformation as to his right to license USG's com-

petitors and fix the price of board made and sold by them and as to the right of the competitors to take licenses and to submit to price control, but it is inconsistent with an intention by Avery and USG and the manufacturers who took licenses to execute them as a blind or "coverup" for illegal purposes and conduct.

There was nothing furtive in the action of the parties. There was open negotiation and discussion between USG and the other companies in the industry of the proposed licenses, and there was open discussion among the companies other than USG of their mutual problems arising out of USG's ownership and insistence upon enforcement of dominant patent rights in the gypsum board field. This is consistent only with good faith in the execution of the licenses.

The conduct of USG and the licensees in respect of the enforcement of the license provisions, especially the price protective provisions, after the licenses were signed, affirmatively evidences good faith. As pointed out in
8794 the statement of facts at the outset of this opinion, USG, in 1932, set up a wholly owned corporation called the Board Survey Company to receive complaints of license violations, investigate the facts, and call them to the attention of the licensee involved, and upon occasion to the attention of the licensor—this for the purpose of bringing about compliance by all of the licensees with the minimum price provisions relating to board made and sold under the licenses. The Government urges this as improper "policing" of the industry, but it appears more reasonable to characterize it as insistence by the licensor and the licensees who lodged complaints upon obedience to the terms of the licenses. From time to time, as also pointed out in the statement of facts, a representative of USG as licensor met with representatives of the licensees to explain to them the provisions of the minimum price bulletins, and for the purpose of securing adherence to these bulletins by the licensees. These meetings were held from as early as June 6, 1929, to March, 1937. Lenci of Ebsary described such meetings held on October 17, November 15, and December 13, 1932, and April 27, 1933. Apparently the only licensee which never attended such a meeting was Texas. The formation by USG of Board Survey, its activity, the lodging by the several licensees with Board Survey of complaints concerning license violations, and the holding of the licensee meetings—all for the purpose of enforcing

the licenses, evidence that the licensor and licensees regarded the license agreements as valid and binding. Their conduct in these respects is inconsistent with sham or subterfuge in the execution of the agreements.

The evidence introduced by the Government shows that the companies which became licensees did so because they desired to settle, or avoid, litigation, and to obtain the right to make the closed-edge board, considering it a business necessity to be able to do so; several of the licensees had made the closed-edge board before they acquired the right to do so from USG, for which infringement of the Utzman patents they paid substantial damages, as described in the statement of facts at the outset of this opinion. Also some of the licensees had manufactured board containing starch which was covered by the Haggerty patent. Numerous other patents included in the licenses were essential to the manufacturing of modern gypsum board. Blagden of Beaver, in describing that company's reasons for taking a license, testified:

Q. And what were your reasons for urging your company to take and finally taking a license as it did in 1926?

A. Well, we had lost the patent suit on two occasions, that is, we had lost our case with the United States Gypsum Company on two occasions, and after studying the situation deeply I felt that we would lose in a higher court, and if we could possibly get together and settle the matter it would be best to do so.

Q. Did you also consider, Mr. Blagden, that it was very important to your company to get the right to make this closed-edge product in order to satisfy the demands of your customers?

A. We had definitely proven that the closed-edge board was the cheapest board to manufacture, and we had tried every other way, and even though we had to pay a royalty we thought it would save us money in the long run.

8795 Q. And what about the demand of your customers for this type of closed-edge board as opposed to open-edge?

A. They were emphatic about that.

Q. They wanted it, that is?

A. They wanted the closed-edge.

Q. And the fact is, of course, that ever since you came with the company, and indeed ever since the Beaver Company had been in existence, the only type of board it had made was a closed-edge?

A. We made for a while a semi-closed edge.

Q. Yes, but some type of closed edge?

A. That is right.

Q. And were you concerned, and was it a reason for your decision to take a license, about the contingent liability which was constantly hanging over the company's head by way of liability for damages?

A. Yes, sir.

Q. Was that a reason why you wanted to take a license?

A. That was a great big reason.

Q. And is it true to say, Mr. Blagden, that you were one of those business men who had a natural dislike for litigation?

A. Yes, sir. I tried to see if we couldn't settle it out of court as soon as I found out the true situation, after becoming president of the company. [Tr. 1673-5.]

Whittemore of Certain-teed testified:

Q. What was the attitude of your company and yourself toward whether or not you desired to manufacture the Utzman closed-edge board?

A. We wanted to make it.

Q. Will you tell the Court the reasons why you wanted to make it?

A. Well, there were a number of reasons. The board was a better board than the open-edge board; it was less subject to damage in transit because of the edge coverage by paper; it was easier to manufacture; and it was decidedly more salable.

Q. Now when you say that it was "decidedly more salable", do you include in that answer the fact that as of this time, at least, there was a strong customer demand in the trade for closed-edge board?

A. Yes. If you will let me answer that question in my own way, I think I can get at what you want to develop.

Q. I wish you would.

A. The Certain-teed Products Corporation made an open-edge board. At the same time, the Beaver Products were making a closed-edge board; when we took over the Beaver Products we immediately discontinued the manufacture of closed-edge board in the Beaver plant, and went to an open-edge board. We found that the customer demand precluded our selling an open-edge board at the same price as the closed-edge board, and prices declined, declined and declined.

Q. Then would you say that the primary reason for your taking this license from USG was to get the right to manufacture the product covered by the closed-edge patent?

A. That was one reason, and also to get rid of the possibility of future litigation. You referred to the Utzman patent. The Utzman patent was only one of some fifty to one hundred patents that we were licensed to use. Some of those patents were vital in the production of closed-edge board, and had we not had a blanket license to use all of the patents of USG, we would have been subject to possible litigation, and we wanted to avoid that—we had had plenty. [Tr. 2663-4.]

Chism of Texas said that the reasons which caused Gloyd to take the license of April 1927 were that before that time the company had been making an open-edge board which proved very unsatisfactory to the trade and caused the company to lose business, that the cost of manufacture was high due to loss from bad board, *i.e.*, "peelers" and broken edges, which made it almost prohibitive. The company had decided in some way to make a better board. The trade preferred the closed-edge board and the company had to do something "pretty quick" to protect its business. Chism knew that the closed-edge board was a patented product and he and the officers of Texas knew that USG owned patents on the machine necessary to make the closed-edge board, and he understood also that USG had other patents, such
8796 as those for the recessed edge and the tongue and groove, which he concluded would be useful in the manufacture of gypsum board. The primary reason for the Texas company's taking the license was that it wanted to get the right to manufacture board under patents which USG owned. Chism indicated also that the license of February 10, 1937, was taken by Texas in order to obtain the advantages of making the light weight bubble board. He testified as follows:

Q. And what about the attitude of your trade in 1927, as to whether they preferred the closed-edge or the open-edge type of board?

* * * * * *

The Witness: The attitude of the trade was that they preferred the closed-edge board, and we had to do something pretty quick to protect our business. The open-edge board just wasn't proving satisfactory.

* * * * * *

Q. And open-edge board was getting increasingly difficult to sell to the trade, wasn't it?

A. That is right.

Q. Now, wasn't it your understanding, also, that USG owned patents on the machine necessary to make the closed-edge board?

A. I think I knew that at the time. I am sure that the officers of the company did.

Q. And wasn't it your understanding, also, that USG had other patents which you concluded would be useful in the manufacture of gypsum board, such as the recessed edge, for instance?

A. Yes, sir, I remember that.

Q. And the tongue and groove patent?

A. Yes, that is true.

Q. Therefore, wasn't the primary reason of the Texas Cement Plaster Company for taking the license, the reason that it wanted to get the right to manufacture board under patents which you understood the United States Gypsum Company owned?

A. Yes, it was.

Q. And as soon as you took out the license, or shortly thereafter, did you commence to make the closed-edge board at your plant?

A. Yes, sir, we did.

Q. And have you made the closed-edge board at all times from that time down to the present time?

A. Yes, we have.

Q. And after you took your license of February 10, 1937, did you commence to make this so-called light-weight or foam-bubble board?

A. Just as soon as we could change our machinery or equipment.

Q. And have you continued the manufacture of that foam or bubble board down to the present time?

* * * * * *

The Witness: Yes, we have.

* * * * * *

Q. And since February 10, 1937, have you used starch to obtain bond between the paper and the core of your board?

* * * * * *

The Witness: Yes, we have.

Q. And isn't it the fact that after you took your license of February 10, 1937, USG sent engineers down there and

instructed you how to manufacture this foam or lightweight board?

A. They did, immediately after signing the agreement.

Q. And they showed you the patents, and they gave you drawings and blueprints, and supervised the installation of the new machinery and taught you how to use it, didn't they?

A. They did.

Q. And they gave you information with respect to the use of such patents as the recessed edge patent, didn't they?

A. Yes, they did. [Tr. 5994-6000]

It appears also that, although there was discussion among the prospective licensees and with USG of the terms of the proposed licenses and of the advantages of signing them, nevertheless the decision to take a license was reached by each of the companies independently. Whittemore testified
8797 that the decision which Certain-teed made before going out to the Chicago meeting in May, 1929, to settle with USG and take a license had nothing to do with any other company in the business, that his company would have taken the license if it could have gotten it without regard to what any other company did or did not do. This was confirmed by George M. Brown, who said that Certain-teed had determined to go ahead with the license without regard to what other companies did about it. Nelson of Certain-teed said that he had reached the conclusion that the best thing for his company was to take out a license, and that it made no difference to Certain-teed whether other companies did or not. Lenci likewise testified that before he left to go to the Chicago meeting in May, 1929, Ebsary and the rest of the responsible officers and directors of the Ebsary company had determined to take a license from USG, Ebsary's reason for taking the license being its desire and need to manufacture a closed-edge type of board. Griswold testified, in respect of American, National, Ebsary and Niagara, that there was no agreement among these companies to get together and take out a license. He said also that he had nothing to do with Atlantic's taking out a license (the reference is to Atlantic's first license, *i.e.*, the 1927 license) except to answer Atlantic's questions with respect to the process of manufacture of wallboard, advising that if Atlantic was going into the board business it was best to make the closed-edge board if Atlantic could reach an agreement with Avery, and sending Atlantic a copy of the USG license; that further than recommending it, he was not responsible for the taking out of a license by Texas, which

company went ahead on its own accord. Griswold also testified categorically that he did not act as agent or emissary of Avery in obtaining the license agreements, and that Avery did not tell him to go out and act for him in inducing other companies to take out a license. As pointed out in the statement of facts at the outset of this opinion, Blagden for Beaver and Avery for USG negotiated the Beaver 1926 license. But Blagden stated definitely that he had nothing to do with the taking by Universal, Atlantic and Texas of their 1926-1927 licenses except to answer questions that individuals may have asked him from time to time. Black of American testified that American signed its license without regard to what other board manufacturers "did or would not do"; that at a meeting in Ebsary's room in New York in October, 1928, there was no understanding or agreement reached that no one would sign unless all signed, and no such understanding or agreement at a subsequent meeting in the Certain-teed office.

The foregoing circumstances—execution of the licenses on the faith of the *Bement* and *General Electric* cases, payment of royalties and damages by the licensees, insistence by USG upon the same terms for all, open negotiation and enforcement, signing by the licensees to avoid litigation and to make the better, closed-edge board, and upon independent decisions by the several licensees—all established by the Government's own witnesses, whose testimony
8798 was frank and convincing—strongly evidenced good faith in the execution of the license agreements.

In the face of the foregoing the Government must rely, in the large, upon the following: In a memorandum of June 6, 1929, by C. O. Brown, sales manager of Certain-teed, which was attached to an intra-company memorandum of June 11 from Whittemore, vice-president, to Van Hagan of the production department (the two memoranda, declarations binding only upon Certain-teed, constitute Government Exhibit 227[36]), reference is made to the interference situation in which the patent applications covering the bubble board invention are involved. Brown mentions that price control on plasterboard under Certain-teed's May 1929 license expires in August, but suggests that this control may be extended if a satisfactory arrangement can be made with the bubble board patent. He states that for

36 Since the only exhibits in evidence are Government exhibits they will for convenience be referred to hereafter merely as Exhibit —, rather than as Government Exhibit —.

legal reasons the bubble patent "should not be considered from the standpoint of price control but should be gone into by each manufacturer from the standpoint of economy and benefit. Price control would naturally follow such a move." Brown then suggests that Van Hagan see Knode of USG in respect of estimated savings in manufacturing costs under the bubble patent, refers to receipt of a proposed form of license agreement, states that USG is making the bubble board and therefore knows from experience that it is practical, and then concludes that "The lawyers are very emphatic that there is a much less chance of being accused of using the patent as a subterfuge to control price —first being, it is gone into before expiration of the Basic patent on plaster board and second, it is gone into from the standpoint of economy in cost." Brown states also that the lawyers pronounce the patent a very strong one if and when issued. Whittemore, in his memorandum, refers to Brown's attached memorandum as indicating possible advantages in the bubble board, and requests Van Hagan to investigate with Knode the possible savings in the use of the invention. Certain-teed did in fact, according to the evidence, investigate the bubble board invention and concluded, about July 3, 1929, that it had merit and that a license should be taken. This is evidenced by Exhibit 228 (a declaration binding only upon Certain-teed), an intra-company memorandum of July 3, 1929, written by C. O. Brown, and by his testimony. Certain-teed was apparently not motivated by a desire for price-fixing when it determined to take this license, for George M. Brown testified that the company would always have opposed price fixing if it could have done so; that he finally agreed to submit to a price fixing provision because it was the only basis on which Certain-teed could get a license from USG; that the company had concluded that it was desirable and beneficial to have the right to use the Haggerty starch and the Roos bubble board
8799 patents, as well as others. In respect of his memorandum to Van Hagan, Whittemore testified that when he said therein "you can easily see the possibilities in this bubble patent," he was referring to the possibility of making under that patent "as cheap a product and just as good a one." He testified further that he had the final decision in respect of Certain-teed's taking out the bubble board and starch patent licenses. He said that the primary reason motivating Certain-teed was that the method of manufacturing covered by these patents was decidedly cheaper, and that the product could be made much lighter with resultant sav-

ings in transportation costs not only to Certain-teed but also to board users, *i.e.*, that this made the freight charge paid by the purchaser less. Whittemore testified also that Certain-teed made a careful investigation of the merits of the foam invention before signing the license. It had experimented with thermocrete, an effervescent material which created bubbles in the core of board, in an effort to find something to replace sawdust as an aggregate, but thermocrete proved not adaptable in the manufacture of light weight board. Whittemore recollected that Van Hagan saw the bubble board process in operation at one of USG's plants before the license was signed. The reliance of the Government is upon the statements of C. O. Brown above quoted. They are asserted to evidence consciousness of guilt on the part of the officials of Certain-teed. With equal reason there might be inferred a purpose not to take the bubble board license unless there were economic reasons for doing so, and no illegality either in fact or appearance. When Exhibit 227 is viewed in the light of all of the evidence above set forth in respect of it, it cannot reasonably be inferred that Certain-teed was not acting in good faith. The mention by C. O. Brown that price control on board may be extended after August if a satisfactory arrangement can be made with the bubble board patent is not evidence of bad faith in taking out the November license. It could be no less lawful to take out a license extending or renewing price control than to take out the original license providing for price control. Both were legitimatized by the *General Electric* decision.

In an intra-company memorandum of August 9, 1929, from C. O. Brown of Certain-teed to George M. Brown reference is made to a recent meeting of gypsum board manufacturers in Chicago in respect of licenses and royalties on gypsum board patents, to the proposed purchase by USG from Universal of the starch patents and the proposal of USG to grant licenses to its own licensees to use both the starch and foam inventions in board manufacture. The memorandum states that it would be the plan to write one contract covering all patents involved, the machine patent on closed-edge board, the bubble patent, the starch patent and the bundling patent, and that the attorneys feel that

such a contract would be exceptionally strong and
8800 that price control could be maintained during its life
without difficulty. There is an attached memorandum of July 30, 1929, also by C. O. Brown (the two memoranda, declarations binding only upon Certain-teed, constitute Ex-

hibit 231), in reference to a meeting in Chicago a fortnight earlier, attended by National, Atlantic and Ebsary, with their lawyers, and by C. O. Brown for Certain-teed. This memorandum refers to proposed bubble and starch patent license arrangements and to the reluctance of National to sign a license until the starch patent litigation is settled; it suggests that Universal's not signing—put by Universal upon the grounds that it has not assured itself that the bubble process is more economical than the starch process, and that Universal is in the hands of receivers and therefore could not bind itself for a period beyond the receivership—is in the nature of a "holdup" to force a sale of the starch patent. The memorandum states that USG advises that it has nothing to fear from the starch patent, refers to the anxiety of Universal, being in receivership, to capitalize on the starch patent for its maximum value, and asserts that in the view of Atlantic and National the starch patent could have been bought until recently for $200,000 or less, whereas if the entire industry paid a royalty under licenses, at present price levels, until 1938, the total might be several million dollars. This memorandum of July 30 refers also to Avery's refusal to discuss what the arrangements between USG and Universal would be. It goes on to say that there is some doubt as to the strength of the starch patent and that all of the companies with the exception of National would be free to contest its validity if they did use it (that is, in the absence of a license); but that in the interest of harmony USG has been making tests to see if there was value in combining the starch and bubble processes and advises that experiments indicate that there would be benefit in using starch in a limited degree with the bubble process. The memorandum also states that it would be advantageous to combine the two patents since the starch patent has issued, whereas the bubble patent is in an application status, so that a combination of the two would give a patent to work under at once in the manufacture and sale of gypsum board, whereas under the bubble process alone there would be an interim between August 6 and the date of issuance of the bubble patent when there would be no patent control—that there is considerable benefit in having patent control continue without a break. Whittemore testified that during the negotiations for the bubble license Certain-teed had learned that USG had purchased the Haggerty and Hite starch patents, that Certain-teed had already investigated the starch situation and thought that it might be subject, on account of its own use of starch,

to a claim of infringement of the Haggerty patent. He said that as a result, when the opportunity to relieve itself
8801 of such a claim was presented, Certain-teed was glad to take advantage of it. Starch was important in the manufacture of marketable gypsum board; it secured firm adhesion between the paper and the core and prevented "peelers." Whittemore denied that there was any understanding that the starch and bubble patents would be used merely as a vehicle to obtain price control. It is not apparent how the foregoing intra-company discussion evidences bad faith in taking the November license by Certain-teed, even though price control by USG was one of the objectives. It was not unlawful for USG to grant the license subject to a right to fix prices; it could not therefore be unlawful for Certain-teed to accept such a license with all of its advantages, including price control by USG, in mind. In view of the possibility of an infringement claim, and in view of the importance of starch in the manufacture of marketable gypsum board and the study made by Certain-teed of the advantages of the starch and bubble patents, it cannot fairly be concluded that the license was taken by this company only as a sham. C. O. Brown's statement that the attorneys feel that a license contract covering the machine patent on closed-edge board, and the bubble, starch and bundling patents, would be exceptionally strong, and that price control could be maintained during its life without difficulty, evidences that the attorneys were of the view that price control by USG under its patents, acquired or to be acquired, would be lawful.

As recited in the statement of facts at the outset of this opinion, Certain-teed acquired the assets of Beaver on January 20, 1928, but refused to assume the obligations of the USG-Beaver settlement agreement and license, whereupon on or about February 21, 1928, USG brought suit in the District Court of the United States in Illinois against Certain-teed and Beaver seeking an injunction against the distribution to the Beaver stockholders of the proceeds of the sale, and asserting that Certain-teed should be required to assume the liabilities of Beaver to USG. In a Certain-teed intra-company memorandum dated March 1, 1928 (Exhibit 212, a declaration binding only upon Certain-teed), apparently written by George M. Brown, this suit is referred to and the statement made that the action should be defended and an answer filed alleging that the suit was commenced "not in the interests of royalties but for the sole purpose of

trade domination and monopoly and price control." On March 14, 1928, Certain-teed, by its counsel, filed in this suit an unverified answer (Exhibit 324, received in evidence only as a possible admission on the part of Certain-teed and not as binding upon any other defendant), containing allegations again to the effect that the purpose of the suit was not to collect the royalties to which USG claimed it was entitled, but to enable USG "to continue to dominate and monopolize the industry and to restrain competition
8802 by this defendant." As has also been stated in the statement of facts at the outset of this opinion, Certain-teed on May 22, 1929, settled this suit with USG and signed a patent license agreement. It is contended by the Government that Certain-teed's taking this license agreement in the face of the statements in Exhibits 212 and 324 evidences bad faith; that is to say, that if Certain-teed knew or believed that USG was attempting to dominate and monopolize the gypsum board industry and to restrain competition by Certain-teed, that company must have intended to join in such an illegal purpose when it took the license. But it can with at least equal, if indeed not greater, reasonableness be inferred that Certain-teed had before signing the license reached the conclusion that its statement concerning USG's purpose in bringing the suit was erroneous, and that Certain-teed therefore felt free to accept the license agreement. The exhibits are therefore equivocal in meaning and constitute no substantial evidence of bad faith.

As appears from the statement of facts, the perforated lath license contracts were signed by Certain-teed, American, Ebsary and Kelley on June 8, 1936, July 10, 1936, February 2, 1937, and June 23, 1937, respectively. These contracts were based upon the Roos perforated lath patent No. 1,938,354. It is asserted by the Government that these licenses were not taken in good faith. The principal reliance of the Government in respect of this charge is upon two letters, one of December 27, 1933, and one of March 4, 1936 (Exhibits 602 and 601 respectively, declarations binding only upon Certain-teed). Both were written to Certain-teed by Spencer, a patent lawyer. In each Spencer states that in his view the perforated lath patent is not valid. The Government contends that since Certain-teed took the perforated lath license in the face of this statement it must be said to have acted in bad faith, to have taken the license only as a subterfuge and cover for illegal purposes.

The evidence shows that building codes contain varying requirements in respect of the fire resistant qualities of building materials. In many localities there is a requirement in the case of plaster bases that a wall structure (the base, plus the applied coat of plaster) must stand a one hour fire test. Ordinary gypsum lath does not pass this test because upon the application of great heat the applied coat of plaster calcines and drops off the lath and the structure collapses. USG, to meet this difficulty, developed the perforated gypsum lath covered by the Roos patent. This lath contained perforations of such size and spacing as to permit a wall structure composed of it to withstand the one hour test. It appears that when plaster is applied to this type of lath some of it passes through the perforations and forms
a mechanical key which, because of the size and spac-
8803 ing of the holes, supports the coat of plaster with the
result that it will resist fire for an hour. Ingberg, an expert from the Bureau of Standards, testified that the only perforated lath which ever passed the one hour test was of the type covered by the Roos perforated lath patent, having at least ¾ inch holes, one to each sixteen square inches of surface; that in many tests performed at the Bureau no perforated lath with a hole less than ¾ inch in size successfully passed the test, and that no perforated lath passed it that did not have the holes arranged at least one to every sixteen square inches. Ingberg further testified that USG's perforated lath was submitted to the Bureau and that it passed the one hour fire test and received the Bureau's one hour fire rating; that this was the first lath ever to pass this test. Whittemore of Certain-teed testified that since USG was proposing to bring out perforated lath, it was necessary for Certain-teed to obtain a supply of the product in order to be competitive, or as he put it "to protect our mixed car business." He said that if his company had tried itself to make the lath, it would have been obliged to have it tested by the Bureau of Standards to see whether or not it would stand the one hour fire test under which the Roos patent had qualified. Certain-teed thought that the volume of business in perforated lath would be small—although in this respect the company turned out to be mistaken, as the demand in the trade became considerable. Nevertheless, not wanting itself to spend money attempting to make a fire resistant board, Certain-teed thought that the simple and easy thing to do was to take a license. Whittemore said, "We also realized that the statement that no

patent is so strong that it can't be broken, and so weak that it can't be sustained, was pretty nearly true," and that "We * * * realized that in litigated matters the attorneys are always 50 percent wrong." He reiterated that Certain-teed, not desiring itself to build up an expense account in respect of development of the lath and not wishing to risk possible liability in future litigation, decided that the best thing to do was to take a license. In explaining this he referred to an episode in Certain-teed's past manufacturing experience wherein a competitor, after contesting certain patents for several years, had been subjected to three-quarters of a million dollars infringement damages and half a million in expense for attorneys' fees and costs, when his own company escaped by paying $25,000 for a license under the same patents. This, he testified, had been a lesson to Certain-teed to be careful in respect of building up possible patent infringement litigation.

Spencer, the writer of Exhibits 601 and 602, was called to the witness stand. He testified that, in advising Certain-teed that in his opinion the Roos perforated lath patent was not valid, he nevertheless also pointed out in the
8804 same letters that his opinion might be wrong, that the patent, having been issued by the Patent Office, was valid on its face, and that validity litigation which might ensue upon ignoring it might be expensive and the damages high. In Exhibit 602, the letter of December 27, 1933, he recognized the possibility that a district court might hold the patent valid and that such a decision might be affirmed by the circuit court of appeals. He admitted that in Exhibit 601, the letter of March 4, 1936, he suggested methods of avoiding the Roos patent, and told Certain-teed that it was his judgment that it would be unwise completely to ignore it. In answer to the question whether or not he meant to suggest that Certain-teed did not act in good faith in taking the perforated lath license, he replied that he thought Certain-teed's action was consistent with his opinion.

It would not be reasonable to conclude, in view of the foregoing, that Certain-teed was not acting in good faith in taking the perforated lath license. In view of the qualifications put by Spencer upon his opinions, of the experience of Certain-teed in respect of contests of the validity of patents, and in view of the need of Certain-teed for the perforated lath and the demonstrated competency of the USG product to meet building code fire tests, it appears that the company

was acting providently and honestly, rather than in bad faith, in taking the perforated lath license.

In respect of Newark, Tomkins testified that his company took the perforated lath license because it desired to be competitive with the other licensees who had signed a similar agreement; that Newark found it necessary to sell perforated lath; that he felt that the company had to be in a position to produce it and that he wished to be able to do so lawfully.[37] There appears to be nothing in the record directly relating to the question of the good faith of American or Ebsary in respect of their taking perforated lath licenses.

It cannot be concluded from the evidence that the perforated lath licenses were not executed in good faith.

Substantiation of the Government's charge, set forth in the statement of facts at the outset of this opinion, that the metallized board licenses were signed by the various licensees, except National, without any expectation that they would manufacture such board, but with the intention that they would purchase it from USG or National and then resell it at prices and under conditions fixed by USG, would evidence lack of good faith in the execution of these licenses. But this charge is not proved; on the contrary there is substantial evidence refuting it. The metallized
8805 board licenses were, as appears from the statement of facts, signed by National, Kelley, Certain-teed, Atlantic, American, Universal and Ebsary on October 5, 1934, October 12, 1934, November 2, 1934, November 30, 1934, December 4, 1934, April 4, 1935, and August 14, 1935, respectively. C. O. Brown testified that when Certain-teed executed the metallized board license it intended to manufacture such board; that Certain-teed had no agreement or understanding as to the price at which it would resell metallized board purchased from other companies; that he knew that the price bulletins sent out by USG did not apply to metallized board purchased from others, but only to such board manufactured by Certain-teed. Whittemore, of the same company, stated that price control applied only to patented products manufactured by Certain-teed, and that he understood that USG had no right to control any price except that of the manufactured product at its first sale by Certain-teed to a third party; that the amount of metal-

37 On May 1, 1937, Newark purchased the stock of Kelley. On June 23, 1937, Kelley executed its perforated lath license agreement with USG. On January 3, 1939, Newark merged with Kelley. On the same date USG granted Newark a perforated lath license, at the same time canceling the previous perforated lath license granted Kelley.

lized board which Certain-teed purchased from other manufacturers was so small that "you could wheel it out in a wheelbarrow." Neale of Atlantic testified that he talked with Fuller of that company about the desirability of executing a metallized board license and that he (Neale) favored such a license, since there was an increasing demand for that type of board. A memorandum of September 6, 1934, from Fuller to Neale (Exhibit 289, a declaration binding only upon Atlantic) states that Atlantic, realizing that much work would have to be done and much money spent to get the new type of product accepted in volume, "would rather see U. S. G. and National bear the brunt of this work, and hop on when the bus is running." Neale testified further that when Atlantic took the license it intended to manufacture metallized board, and that early in 1935 the company was taking steps to get into manufacturing immediately in the metallized board field. Neale said also that he knew that under this license the only price that could be fixed by USG was that upon such board as was manufactured by Atlantic under the patent. Black of American testified that Henning of USG thought that the board manufacturers should get behind this new insulating product, and that he (Black) agreed with this, that insulation board had developed into a strong competitor of gypsum boaid and that he felt that it would be a good thing for the manufacturers to enter the metallized board field. He testified further that American took the metallized board license with the expectation of manufacturing the product, and that it did manufacture the same after taking the license. Black testified also that it was his understanding at all times that the only price fixed by USG was that of board manufactured by American under the patents licensed by USG. In respect of Kelley and Newark, Tomkins stated that both of those companies manufactured metallized board.

Lenci of Ebsary said that that company took the
8806 metallized board license because it desired to manufacture the product; that he felt it was a matter of some importance to board manufacturers to be able to make a board and a lath with insulating qualities; that Ebsary started to make this product early in 1936. He testified further that Ebsary did not receive price bulletins on metallized board until the license had been signed, and may not have received them until it commenced manufacturing; that whatever the fact was as to this, he understood that the bulletin provisions applied only to such board as Ebsary

itself made and sold. Lenci said also that there was no understanding or arrangement or agreement with USG that metallized board bulletin prices should be observed prior to the time Ebsary got into production. The testimony of these witnesses establishes the contrary of the Government's charge so far as the companies they represent is concerned. There appears to be no testimony on this subject directly relating to National and Universal.

It has been pointed out in the statement of facts at the outset of this opinion that the royalty payable for the privilege of manufacturing, using and selling gypsum board under the patents was an amount equivalent to a designated percentage of the selling price of the licensees on all gypsum board manufactured by them, whether patented or not. It is apparently urged by the Government that this evidences that the license agreements were not executed in good faith. This royalty provision is in effect a provision for a percentage of gross sales, and as such is but a convenient means of measuring the amount to be paid for the privilege of using the patents. It might with equal propriety have been a lump sum. Especially in view of the fact that it was unlikely for economic reasons that open-edge board would be manufactured after the licensees were authorized to make the superior product—a subject discussed in sub-topic (2) of this topic V—this provision in the license agreements can hardly be looked upon as an attempt to impose a royalty upon an unpatented product. For the same reason it cannot be said to have been intended to drive open-edge board off the market. In the absence of some such purpose in the royalty provision it is not seen how it can evidence bad faith in the execution of the licenses.

It is contended by the Government that the board manufactured and sold by the defendants was not covered by the patents on which the license agreements were based. If this charge were substantiated it would tend to prove bad faith in the execution of the agreements. But as pointed out in topic III the burden of proof on this aspect of the issue of bona fides, as well as upon the whole of that issue, is upon the Government. No evidence has been introduced by the Government proving or tending to prove that the board made and sold by the defendants was not made under the patents.

8807 It is charged by the Government that not all of the agreement between USG and the licensee companies was put into formal writing; that on the contrary, in

addition to the signed license agreements, informal side agreements were made between USG and its licensees that they would discontinue making open-edge board and seconds of closed-edge board, that USG would advance and stabilize the prices for board, that all companies would increase their prices for other gypsum products, and that USG would continue to control prices through the use of other patents after expiration of the Utzman product patent in August, 1929. If there were evidence that such side agreements were entered into, that would tend to prove that the license agreements themselves were not executed in good faith. But there is no evidence that such side agreements were executed, and there is affirmative evidence to the effect that they were not. Griswold of American testified that he had no understanding with Avery or anyone else that price control would be extended under some other patent after expiration of the Utzman patent. C. O. Brown of Certain-teed recalled no understanding that USG would find some other patent to continue price control beyond August 6, 1929, the date of expiration of the Utzman patent. Whittemore had no recollection of any agreement or understanding between Certain-teed and USG or anyone else that USG would find a patent to continue price control upon expiration of the Utzman patent. George M. Brown testified that he never had any agreement or understanding with Avery or anyone in USG outside of those understandings which were contained in the written license agreements between Certain-teed and USG. Holland of Universal testified similarly that he never had any understanding with USG in addition to the provisions contained in Universal's license. Lenci of Ebsary testified that at the time the first price bulletins were supplied under the May 1929 licenses, he knew that the price control could only last until August 6, and had no reason to believe that it would continue beyond that date, that he was not sufficiently familiar with USG's patents to know whether or not USG had others which would take the place of the Utzman patent. The testimony establishing the absence of side agreements on the other subjects concerning which, as above set forth, such agreements were alleged to have been made, is discussed later in this topic V.

We conclude in respect of the first aspect of the charge of lack of bona fides that the evidence introduced by the Government shows that the license agreements were executed as bona fide agreements intended to bind each party

to the promises made therein, not as sham agreements to disguise illegal purposes.

8808 *Were the license agreements non-bona fide because executed with intent to accomplish restraints of trade beyond the proper limits of the patent monopoly,* specifically (1) to raise and fix at arbitrary and non-competitive levels the price of gypsum board; (2) to accomplish improper standardization of gypsum board and its method of production; (3) to raise, maintain and stabilize the level of prices of unpatented materials—plaster and miscellaneous gypsum products; (4) to effectuate improper restriction upon distribution of gypsum board, plaster and miscellaneous gypsum products; or (5) to fix the prices at which manufacturing distributors resell gypsum board?

(1) *Intent to raise the price of gypsum board*: The charge in the complaint is that the defendants raised and fixed at arbitrary and non-competitive levels the price of gypsum board made and sold by them. It is to be borne in mind that within the ruling of the Supreme Court in the *General Electric* and *Bement* cases it is the right of a patentee to fix the price of his product at such level as he chooses and to require his licensees to sell at the price thus fixed. The patent law does not assume to regulate the reasonableness of the price of a patented product. Therefore, the price may lawfully be "arbitrary" in the sense that it is whatever the patentee within his discretion decides to fix, rather than a price determined by economic law. And since the licensor and licensee both lawfully sell at the price fixed by the former, that price is "non-competitive" as between them; and where there is a plurality of licensees the price will be "arbitrary" and "non-competitive" as between all of them and the licensor. All of this has been demonstrated in the discussion of the *General Electric* and *Bement* cases in topic II of this opinion. The charge of the Government, therefore, in the exact terms in which it is put, charges nothing illegal where bona fide patent licensing is involved. Nevertheless, if patent license agreements were executed with an intent by the parties that prices should be fixed at high levels, that might tend to prove that the agreements were not bona fide but were rather a disguise.

But the evidence fails to prove that the licenses were executed with an intent to fix prices at high levels, or at any given levels. The Government's witnesses testified that there was at no time any understanding or agreement, or

even discussion, as to what the prices of gypsum board would be upon the execution of the licenses. Griswold of American testified that Avery did not discuss what prices the licensor might establish for gypsum board, that Avery told him on several occasions that the right to fix prices must be exercised by USG alone; and Griswold said that he did not have any discussion with anyone else as to what board prices would be. Blagden testified that Beaver had no understanding or even discussion with Avery as
8809 to what prices USG would fix under the Beaver license. Holland stated that there was no agreement between Universal and USG in respect of what prices would be on board. C. O. Brown of Certain-teed testified that he did not at any time have any knowledge or receive any information from USG as to what it would do in the future with regard to establishing minimum prices under the licenses; that he had never heard Avery or anyone else state what prices would or would not be fixed; that he was given to understand by USG at all times that the fixing of prices was entirely in its discretion. George M. Brown testified similarly that there was not at any time, either prior or subsequent to taking the licenses, any understanding with Avery or with anyone else that gypsum board prices would be raised; that he never had any discussion with Avery as to what Avery would or would not do with regard to prices on gypsum board; and that Certain-teed had nothing to do with fixing prices. Nelson said that at no time in his conversation with officers and representatives of Certain-teed did he ever hear of any agreement or understanding as to what USG would do about board prices if Certain-teed took a license, and that he never heard of any commitment on the part of USG that it would raise prices. Whittemore also testified on this subject. He stated that USG never made any commitment of any kind as to any figure at which it might fix the price of board after Certain-teed took the license, and that USG never made any statement with respect to what it intended to do concerning fixing prices. He said further that Certain-teed did not enter into its license agreement with USG "for the purpose of rigging up a price-fixing scheme." With respect to Ebsary, Lenci testified that he had no knowledge at any time during the conferences at Chicago on May 21 and 22, 1929, as to what board prices would be until after the licenses were signed and the first of the price bulletins handed to the licensees. He said, further, that Ebsary had no understanding or

agreement that if it took a license USG would raise or stabilize prices on patented board, that he never had any discussion at any time with Avery, or with anyone else, as to what prices Avery would establish after execution of the licenses. Lenci recognized that if USG were to fix the price of board that would naturally have the effect of establishing a uniform price for the industry at a given time, but he stated that he did not understand that there was anything in the license contract which provided that USG should raise or stabilize the price of board. In a telegram to Gloyd of Texas of May 17, 1929 (Exhibit 720, received as binding upon USG only), Avery said: "There has been much discussion of infringement settlement and license on board. Nothing has yet developed although I think it safe to say the outlook is favorable. If license were generally closed it would be desirable to discuss a reasonable market price for the licensed product. Will keep you informed in hope
8810 that you may participate if outcome favorable." But there is no evidence that the suggested discussion of a reasonable market price ever took place.

It is to be noted that discussion of prices between the patentee and the prospective licensees would not have been illegal. In the *General Electric* case the prices established on the patented product were a part of the license agreement itself, and must therefore have been discussed by the parties in determining their contractual obligations. Since a patentee has a right to grant a license and to fix thereunder the price of the patented product and the licensee a duty to abide by such price, the patentee is not bound to refrain from discussing with a prospective licensee what the price is to be. Nevertheless, in the instant case the evidence affirmatively shows that neither before nor after the execution of the licenses were there any discussions between the licensor and the licensees on the subject of the minimum prices at which the patented products were to be sold. Apparently the various companies taking licenses were content to abide whatever action the licensor took with respect to prices, anticipating that the same would be reasonably profitable.

It is true that the evidence shows that the gypsum industry in the "Eastern area" was in a demoralized condition in the years 1927-1929. There was litigation, bad feeling, price cutting. The prices of board had fallen so low that for some manufacturers business was no longer profitable. In this situation it was important to the companies making

board that prices reach a profitable level—and in signing the agreements with USG the several licensees were no doubt in part motivated not only by the desire to make closed-edge board and to settle or avoid litigation, but also by the expectation that the exercise of its price fixing right by USG as licensor would result in a price advance. Prices could not go down and business continue; any change would, as a matter of economic necessity, be upward. Indeed, it is not in dispute that it was the hope and expectation of the several prospective licensees that board prices would advance, and that they would be stabilized—in the sense that each licensee together with the licensor would be selling, at a given time, at the minimum prices fixed by the licensor. Lenci of Ebsary and Whittemore of Certain-teed both testified to the demoralized condition of the industry. Whittemore said, in reference to what he expected would happen to board prices when the May 1929 agreements were signed, that prices "couldn't decline any more. If they went any way they would have to advance." Lenci testified that at the time USG's first price bulletin was supplied to the licensees after the May 1929 licenses were executed in Chicago, someone remarked that he hoped they would get $30 wallboard. Lenci said that the price of board could not go lower than it was and his company stay in business,
8811 that all of the licensees were human enough to hope that prices were going to be stabilized and raised and that they were not disappointed. In the memorandum of July 3, 1929 (Exhibit 228), referred to above in the discussion of the first aspect of the bona fides question, C. O. Brown said: "Taking these things [outlined advantages of signing the bundling and bubble board licenses] into consideration, plus other advantages in working under the patent, we feel justified in taking a license and paying the royalty set by the Licensor"; and he explained that the "other advantages" he had in mind were "a stabilized market on gypsum lath," that is to say "price control." Exhibit 200 (a declaration binding only upon National), the minutes of a directors' meeting of National on July 23, 1929, recites that under the license agreements (the starch and bubble board agreements of November 1929) submitted to each of the wallboard manufacturers "the prices of wall board would be fixed for the whole industry for the term of approximately seventeen years"; and a concluding resolution authorizes the entering of a license agreement "provided that the United States Gypsum Company, by virtue of the

agreement with this Corporation and with other manufacturers of gypsum wall board, shall control the price of wall board sold in the United States and its possessions." The minutes of August 27, 1929 (Exhibit 201), a declaration binding only upon National), authorized the signing of a license by the president if in his judgment such action "will result in *legal* stabilization of the markets." (Italics supplied.)

But evidence that it was expected by the licensees that the price fixing right in USG when exercised would result in the same minimum price of board at a given time for the licensor and for all the licensees who took licenses, and evidence that it was believed that as a matter of economic necessity any prices fixed by USG would be better than the demoralized prices of 1927-1929 and would be profitable prices, falls short of establishing an infent to fix prices at high levels and therefore short of showing lack of bona fides in the execution of the licenses.

Indeed, such evidence fails to prove any illegal intent in respect of price fixing. It is not illegal for parties negotiating a patent license agreement to hope, expect, or intend that the normal economic consequences of patent licensing will follow execution of the license. As said in topic II, a patent license agreement granting the right to make, use and vend the patented product under terms and conditions, including prices, fixed by the licensor, necessarily involves knowledge that a stabilized and presumably profitable price for the patented product will result as between the parties and therefore in the industry. The law cannot legitimatize patent licensing arrangements and at the same time
8812 stigmatize the normal consequences thereof. To conclude that the parties to a patent license agreement, providing for sale of the patented product at a price to be fixed by the licensor, may not lawfully at the time of executing the same anticipate that such prices as are from time to time thus fixed will be profitable and the same for both licensor and licensee, *i.e.,* stabilized as between the parties, would be to conclude that the law forbids the execution of patent licenses with a price fixing provision. The *General Electric* case demonstrates that that is not the law. The foregoing applies as well to a plurality of patent licenses as to a single license.

(2) *Intent to accomplish such standardization of gypsum board and its method of production (specifically, by elimination of the manufacture and sale of open-edge board, sec-*

onds and No. 2 board, and by the restrictive provision of the May 1929 licenses concerning the use of the bundling process) as is beyond the proper limits of the patent monopoly:

Open-edge board: Only Texas, Certain-teed and Ebsary are concerned in respect of the open-edge board issue unless a conspiracy is shown and the other defendant-licensees proved parties thereto, since only those companies had made open-edge board before signing their licenses. Beaver, Universal, National, Niagara and American had made only closed-edge or partially closed-edge board. Atlantic's commencement of manufacturing any board was coincidental with its taking a license.

The evidence establishes that there was no agreement to discontinue the manufacture and sale of open-edge board so far as Certain-teed and Ebsary are concerned. Nothing in the license agreements forbids making and selling it. Whittemore testified that Certain-teed had no agreement with USG not to make open-edge board, that according to his understanding Certain-teed was free to make any board, patented or unpatented, although it did not desire to make the open-edge variety because it could not sell it. C. O. Brown also said that Cerain-teed never had any understanding or agreement that the manufacture of open-edge board would be discontinued after the license was signed, and that there was no discussion of such a thing at the licensee meetings. Nelson testified to similar effect. Lenei of Ebsary stated that there was no understanding or agreement reached in the meetings at Chicago not expressed in the license contracts themselves, one of which he signed for Ebsary, and no agreement that the licensees would no longer make the open-edge board—that there was no agreement inside or outside the licenses that the licensees could not make such board if they desired. There is no evidence that Texas agreed not to make the open-edge board.

It may be taken for granted that those companies which had not manufactured open-edge board had no expectation of commencing its manufacture when they took the
8813 licenses granting them the right to make the closed-edge product. Likewise it is not disputed that each of the companies—Texas, Certain-teed and Ebsary—which had made the open-edge board took its license primarily to obtain the right to make the closed-edge type because this was demanded by the trade and the open-edge was not wanted. Therefore it may be inferred that such licensees

did not expect, once they had secured the right to make the closed-edge board, to go forward further with the manufacture and sale of the inferior article. Lenci of Ebsary testified in this connection that when his company commenced to make board in 1928 it made the open-edge variety, "raw all the way around," and found it unsatisfactory because expensive and wasteful. After fabrication, a portion of such board had to be trimmed off by revolving saws, with resulting piles of raw edges and waste. It was extremely hard to sell the open-edge board—the dealer trade demanded the closed-edge variety at that time (1928-1929) being made by certain of Ebsary's competitors. Ebsary's primary reason for taking a license was its desire and need to make the closed-edge board, and once it got the license for this, the company was anxious to go over to closed-edge production, and independently, through Lenci and the other company officers, determined to do so. C. O. Brown testified similarly that Certain-teed took its license in order to make the less expensive and better board and could see no reason for making the inferior type—that the trade did not want it. Chism of Texas likewise said that prior to taking its April 1927 license Texas was making an open-edge board, which proved unsatisfactory to the trade and caused loss of business; that the cost of manufacture was high due to "peelers" and broken edges, and that the open-edge product was getting increasingly difficult to sell. Texas took the license because it wanted to get the right to make board under USG's patents, and immediately after taking the license commenced the manufacture of the closed-edge board and has made that type of product ever since. In short, the primary intention of these three companies in taking the licenses was to obtain the right to make closed-edge board, and this is what they did make thereafter. But they had no agreement either with USG or with one another not to make the open-edge variety, and were legally free to make and sell it. Their expectation, incidental to the taking of the licenses for the primary purpose of making the superior board, not thereafter to manufacture and sell the open-edge variety, was not illegal. The primary purpose being lawful, the incidental expectation cannot be unlawful. Those who have been making, outside of a license, an inferior product, are not bound by the Sherman Act to intend to continue its manufacture and sale in the event they take a license to make a superior product. The discontinuance of making and selling the inferior article will be the

normal economic consequence, or accompaniment, of the manufacture and sale of the superior one. As stated
8814 in topic II, the law cannot legitimatize patent licensing arrangements and operations and at the same time stigmatize as unlawful the purpose to bring them about, the necessary means of bringing them about and carrying them on, or the consequences which normally flow from them. It was there pointed out also that a license to make, use and vend a superior patented product involves probable discontinuance of manufacture and sale of inferior products.

The Government appears to rely upon Exhibits 226 and 332 as evidence of an improper intent not to make and sell open-edge board. The first of these is a memorandum of June 4, 1929, by George M. Brown (a declaration binding only upon Certain-teed), referring to the benefits anticipated in stabilizing the industry by the making of a uniform product. But if it was not illegal to take a license and to make and sell thereunder the closed-edge board, it was not illegal to anticipate the benefits normally flowing from such a course. Exhibit 332 is USG's Report to Stockholders for the fiscal year ending December 31, 1929 (a declaration admitted as binding only upon USG). This report refers to the correction of infringement conditions by damage payments and licenses under royalty, and then states that the returns, while substantial, are relatively of a minor amount —that the major benefits are relief from legal contention and "increased consumption of wallboard products which should follow the quality improvements that a full and uniform use of the patented methods and products should assure." It was lawful for USG to offer to the several board manufacturers, and for them to accept, the closed-edge board license. Since all of the manufacturers took such licenses and made and sold such board there was bound to be full and uniform use thereof. That was a benefit which the patentee had a legal right to anticipate.

The Government appears to construe the provision of the licenses providing for payment as royalty of "an amount • • • equivalent to [a stated percentage] of the selling price of the Licensee of all plasterboard or gypsum wallboard of every kind, whether patented or unpatented, manufactured and sold by Licensee," as an agreement to make the patented product and no other—notwithstanding that this provision on its face impliedly recognizes the right of the licensees to

make open-edge board.[38] It may be assumed, and there is support for the assumption in the testimony of
8815 Lenci, that with royalty thus measurable by all board produced, whether patented or not, and with open-edge board more expensive to make than the closed-edge type, it would have been a business impossibility to continue making the open-edge board as well as the closed-edge variety. Theoretically, it may be said that such a provision in the licenses must either be intended as an indirect application of the royalty to unpatented board or an attempt to eliminate the manufacture of the latter. But under the circumstances of this case as shown by the evidence it can hardly be said to be either, since it was unlikely economically that the open-edge board would be manufactured once the right to make the closed-edge board was acquired. In view of the attitude of the trade the open-edge board would not have been marketed even if the royalty had not been measurable in part by its sale, since it was inferior board and not desired in comparison with the closed-edge type.

The fifth and sixth "whereas clauses" in the Ebsary agreement of May 22, 1929, Exhibit 5, read as follows:

Whereas, Licensor has been unwilling to grant a license except upon the express condition that Licensee will manufacture plasterboard or gypsum wallboard only with a folded or protected edge similar to that manufactured by Licensor, so that Licensor may be protected in its own business of manufacturing and selling said patented products and realize to the fullest extent the benefits under said patents from the manufacture by said Licensee; and

Whereas, Licensor has agreed to waive the express condition aforesaid and grant the said License in considera-

38 The provision in full is: "2. The Licensee further agrees to pay to the Licensor for the right, license and privilege of manufacturing, using and/or selling plasterboard or gypsum wallboard, and for the privilege of using the processes and making and using the machines and/or inventions embodying the inventions set forth and claimed in said Utzman Patents and in any and all of said patents and applications for letters patent described in Exhibit A, an amount (hereinafter for convenience referred to as a license fee or royalty) equivalent to five per cent (5%) of the selling price of the Licensee of all plasterboard or gypsum wallboard of every kind, whether patented or unpatented, manufactured and sold by Licensee between the date hereof and August 6, 1929, the date of the expiration of said Utzman Patent Number 1,034,746, and thereafter an amount equivalent to one and one half per cent (1 1/2%) of the selling price of the Licensee of all such plasterboard or gypsum wallboard from August 6, 1929, until February 10, 1937, the date of the expiration of said Patent Number 1,330,413."

This is the language of the Ebsary license of May 22, 1929, Exhibit 5. The provisions of the Texas license of April 11, 1927, Exhibit 599, and of the Certain-teed license of May 22, 1929, Exhibit 4, are similar.

tion of the agreement of Licensee to pay to it for the license to use the processes and make and use the machines and/or inventions set forth and claimed in all of said patents and applications for letters patent the amounts hereinafter stated and upon the terms and conditions hereinafter set forth * * *

The Government contends that the language of the sixth "whereas clause" is only a "purported waiver of such condition" referred to in the fifth, and asserts that the fact is that by tacit agreement all of the companies understood in May, 1929, that the open-edge board was to be discontinued. The Government refers to the testimony of Lenci who, on being shown on direct examination only the fifth "whereas clause," said that it was the understanding of everybody who took out a license that the making of open-edge board was to be discontinued. But on cross-examination, when his attention was called to the sixth "whereas clause," Lenci corrected this statement as follows:

Q. Now, in the light of that paragraph, isn't it clear to you that there was no understanding whatsoever on the part of anybody that the licensees would discontinue the making of open-edge board?

A. Yes, that is right.

Q. There was no such understanding, was there?

8816 A. No.

Q. And there was no understanding that the licensees could not make open-edge board outside of this agreement, was there?

A. No.

Q. So that, your testimony is now, isn't it, that there was no agreement or understanding, either in the license or outside of the license, that the licensees could not make open-edge board if they wanted to?

A. That is correct. [Tr. 5234.]

The testimony thus given after both "whereas clauses" had been shown to the witness is accepted as correctly reflecting the facts.[39]

We conclude that there is no substantial evidence that the license agreements were executed with an unlawful intent to eliminate open-edge board, and therefore no sub-

39 In the record the "whereas clauses" above mentioned were incorrectly referred to as the third and fourth rather than the fifth and sixth. This was because what was shown the witness during the examination was page 48 of the complaint on which four "whereas clauses" appeared. But there were two previous "whereas clauses" on page 47. The Ebsary agreement of May 22, 1929, is printed in the complaint at pages 47-57 inclusive.

stantial evidence that the agreements were in such respect not bona fide. Each of the parties to the license agreements was, as said above, free to make and sell open-edge board. Any expectation not to do so was the normal consequence, or accompaniment, of the purpose to make and sell the superior closed-edge product. To hold that the licensees were required to continue to make and sell the inferior article, or that they could not lawfully have an expectation, or even a definite intent, not to do so would be in effect to rule that they could not take the licenses to make the superior board. The law does not at one and the same time sanction an act and penalize the normal economic consequences thereof.

Seconds and No. 2 board: A "second," in the parlance of the trade, is a defective board produced unintentionally in the process of manufacturing standard board. A "No. 2 board" is a board made of lower grade material than that used in the manufacturing of the standard board. Unlike open-edge board, both seconds and No. 2 board are, by definition, board made under the patents. The uncontradicted evidence is that there was no agreement or understanding that seconds and No. 2 board would not be manufactured, but on the contrary that the licensees were free at all times to make and sell such board. C. O. Brown of Certain-teed, Neale of Atlantic, and Black of Celotex were the witnesses examined on this subject. Brown testified that Certain-teed never had any agreement or understanding that the manufacture of second grade board would be discontinued after it received its license. Neale testified, referring to a letter of May 24, 1927 (Exhibit 279),[40] written by Fuller to Avery of USG, that at all times from that date forward
8817 Atlantic sold, without restriction, such seconds as resulted from its production and that he did not recall any agreement or understanding with Avery, USG, or anyone else with respect to whether Atlantic should sell seconds. Black testified that it was his understanding that there was no provision in the licenses which prohibited Celotex from selling seconds if it wanted to, and no agreement

40 This letter (a declaration binding only upon Atlantic) refers to the undesirability of selling seconds in certain markets, to the restriction of sales of seconds to such territory as might absorb them with the least disturbance to the trade in general, and to the policy of Atlantic to sell as few seconds anywhere as possible. The letter refers also to the need of each wallboard manufacturer for some outlet for No. 2 board, stating that this is logical in territory fairly near the plant since this reduced price commodity cannot bear much freight.

between Celotex and USG by which Celotex agreed not to market seconds.

It is contended by the Government that the provision of the license agreements requiring seconds to be marked as such evidences an intention to accomplish their elimination.[41] On the contrary it indicates that it was expected that seconds would be made—as they inevitably are, according to the testimony—otherwise why require them to be marked. If there were to be no seconds, the marking provision would be superfluous. It is reasonably inferable that the real purpose of this provision was to prevent harming the reputation of the standard board by the confusion of seconds with it. Such a precaution was not improper.

We think there is no warrant in the evidence for a conclusion that the license agreements were executed with an intent to eliminate seconds and No. 2 board, and no warrant, therefore, for a conclusion that they were in this respect not bona fide.

The bundling process: USG's Birdsey patent No. 1,696,877, of December 25, 1928, covered a method of binding seven or eight pieces of gypsum board or lath together with a gummed tape which ran lengthwise along the edges of the board or lath. The May 1929 license agreements, except that with Certain-teed, granted rights under this patent and required that the licensees use this bundling process and no other.[42] As is explained in the statement of facts at the outset of this opinion, Certain-teed was first granted license rights under the bundling patent by a supplemental license agreement executed July 3, 1929. This contained the restrictive provision. The November 1929 agreements did not contain the restrictive provision.

It appears from the evidence that there is no satisfactory way of bundling gypsum board or lath except by means of the Birdsey process. C. O. Brown testified that Cer-
8818 tain-teed wanted to bundle its lath and knew of no better or more economical way than the process cov-

41 The license provision was as follows: "9. The Licensee and the Licensor each expressly covenants and agrees that all of said patented product sold by it and commonly known in the trade as 'seconds' shall be plainly invoiced as seconds and shall be plainly marked with a visible red stamp or label firmly fixed on each of said board showing the word 'seconds' in letters at least three inches in height." (Exhibit 3, paragraph 9.)

42 The restrictive provision was: "It is expressly understood that licensee in its business of manufacturing and selling plasterboard and/or gypsum wallboard will use only said bundle set forth and claimed in said Patent Number 1,696,877 and will not use any other bundle or method of bundling plasterboard during the term of said license." This is the language of the Ebsary agreement of May 22, 1929 (Exhibit 5).

ered by the bundle patent. Chism said that prior to its license of February 10, 1937, Texas did not bundle wallboard at all, and that lath was tied with wire, baling wire or a little heavier, wrapped around the bundle at both ends—about the same method as that used in baling hay; that this was not satisfactory because it caused too much breakage, and because the wire would slip and cut the lath; that after Texas took the license it used the Birdsey patent system of bundling by the use of paper strips on both board and lath—that it has used that invention ever since and is still using it.

It is inferable that the restrictive provision of the May 1929 licenses (and of Certain-teed's July 3, 1929, supplemental license) was put into the contracts for two purposes: to exploit the bundling patent and to accomplish packaging and delivery of board and lath by the licensees in a manner which would preserve quality, *i.e.*, without breakage. Delivery of board by the licensees in broken condition would tend to devalue the product and thus lessen the pecuniary reward of the patentee's monopoly. Within the principle of the *General Electric* decision, it would be a not improper license term to require packaging of a patent product in such manner as would sustain its quality and therefore the price. *Quaere*: Can the owner of a product patent who is also owner of a process patent covering packaging of the product insure proper packaging by requiring use of the patented process only? Is such a restriction illegal as involving a purpose beyond the proper scope of either or both such patent monopolies?

It is urged that if the effect of such a restrictive provision is to drive off the market a competing process, whether patented or not, the provision would be illegal under the principle of the *Motion Picture Patents* case, discussed in topics II and III, because not the incidental consequence of the proper use in its own field of the patent monopoly, but its use in restraint of trade in a field where the rights to compete are common. The ruling in *National Lockwasher Co.* v. *George K. Garrett Co.*, 137 F. (2d) 255 (C. C. A. 3d, 1943), *rehearing denied, id.*, is also urged as rendering such a provision illegal. In that case the plaintiff sought damages for infringement of a patent for a compression spring washer. The defendant opposed recovery upon the ground that the plaintiff had issued licenses to various manufacturers of metal washers under a form of agreement by which as licensees they undertook that they would not make or sell any form of "non-tangling" spring washers not covered by the plaintiff's patent. The court held, in view of this restriction,

that the plaintiff was using its patent to suppress competition by unpatented articles, and it accordingly denied recovery. It is to be noted that this case did not involve the use of a process patent in aid of a product patent. It
8819 is contended, moreover, that even in the absence of a competing process or product such a restrictive provision would be illegal, since it would tend to stifle the use of another process or product, if such should be devised, and to discourage invention.

It is pointed out in topic VI.(2) of this opinion that it is neither necessary nor proper to rule upon the question of the legality of the restrictive bundling provision in the May 1929 licenses and the Certain-teed supplemental license of July 3, 1929, for the reason that the question is moot, the provision having been eliminated in the November 1929 licenses. Assuming for the purpose of the present discussion, however, that the restriction in the May licenses and the Certain-teed July license was illegal, it would follow technically that there was in this respect an improper purpose involved in their execution and that they were in this respect, therefore, not bona fide. But since this purpose was abandoned when the November licenses were executed with the restrictive provision omitted, the provision and its purpose cannot be held to support the charge of an intent to accomplish improper industry standardization. While the earlier licenses and the negotiations concerning them and the operations under them are relevant to the purposes of the November licenses, it is the latter which are now outstanding, and under attack in this suit. An abandoned purpose, even if it was illegal while it existed, in the previous licenses, cannot be held to vitiate the present licenses.

In the May 1929 licenses and the Certain-teed July license each licensee agreed to pay the licensor for the right to use the bundling process "a license fee or royalty of ten cents (10¢) per thousand square feet of plasterboard and/or gypsum wallboard which is sold by it in bundles of any kind." [43] In the November 1929 contracts the provision was for "an amount (hereinafter referred to as a license fee or royalty) equivalent to ten cents (10¢) per one thousand (1,000) square feet of plasterboard and/or gypsum wallboard which is sold by Licensee in bundles of any kind,

43 This is the language of the Ebsary agreement of May 22, 1929 (Exhibit 5).

whether or not the bundles shall be made according to the claims set forth and claimed in said patents * * *. The term 'bundle' shall not include unbundled material wired or strapped for purpose of transportation or unbundled material shipped for export or coastwise trade in fiber, wooden or other crates." [44] It is urged by the Government that these provisions evidence an attempt to standardize by eliminating other methods of packaging. But in view of the fact, shown by the evidence, that no other process was available (except, for lath, the common and uneconomic method of tying with wire), this cannot be concluded.

8820 (3) *Intent to raise, maintain and stabilize the level of prices of unpatented materials—plaster and miscellaneous gypsum products*:[45] All of the witnesses examined upon this subject testified convincingly that there was at no time any understanding or agreement that prices would be raised or fixed upon plaster or any unpatented gypsum product. Griswold of American testified that there was no discussion between him and Avery of the price of gypsum block and plaster, and no agreement with USG or with any of the other licensees about plaster, block, or tile prices; that it was understood that such an agreement would be illegal. Blagden said that the Beaver license had nothing to do with the price of plaster or miscellaneous gypsum products, and that he had no understanding with Avery, or with anyone else, as to the price of plaster or any other unpatented material. Holland testified that when he became president of Universal, he had no understanding with USG, or anyone else, with respect to the prices of plaster or other unpatented products. With respect to Certain-teed, C. O. Brown stated that he had no understanding that the license agreements of either May or November 1929 would be used to raise or fix the prices of plaster or other unpatented gypsum products; that so far as he knew there was never at any time any agreement or understanding reached regarding the fixing of prices of such materials; that he knew that price fixing under the licenses was applicable only to the patented articles made by Certain-teed, and that Certain-teed was free to sell unpatented products at such prices and on such terms as it chose. George M. Brown testified similarly that Certain-

44 This is the language of the Ebsary agreement of October 18, 1929 (Exhibit 11).

45 The miscellaneous gypsum products referred to in the complaint, as specified by the bill of particulars, are gypsum block, gypsum tile, and Keene's cement.

teed never had any understanding with anyone about the prices it should charge for plaster, gypsum block, gypsum tile, or Keene's cement. Nelson of the same company, testifying concerning the May 1929 license, said that he had never heard of any agreement or understanding that the price control provided for therein should extend to unpatented articles such as plaster, Keene's cement, tile, or block. Whittemore also, referring to the May 1929 license, said that there was never any understanding or agreement with anyone that the prices of plaster or unpatented gypsum products would be raised or fixed; that the only prices which USG could fix under the license agreement were those of patented articles made by Certain-teed.

Lenci of Ebsary testified that he never had any understanding or agreement with anyone with respect to plaster prices other than what was contained in the license agreement or bulletins; that there was nothing in the license agreement concerning plaster; and that the only thing in the bulletins was the protective provision against violation of the minimum price requirements through the
8821 device, among others, of giving away plaster or other products in connection with the sale of board, or the sale of plaster or other products, in connection with the sale of board, at a price unduly below the prevailing market price of such products. Lenci testified further that there was nothing that kept Ebsary from free competition in plaster, and that in his experience such competition was extremely free during the last ten or fifteen years. Black said that Celotex never had any agreement or understanding with USG, or with any other licensee, to raise or fix the prices of plaster or other unpatented gypsum products; that he knew that the license agreements which his company had related only to patented board so far as the price fixing provisions were concerned. Tomkins of Newark stated that he at all times felt perfectly free to charge any price for plaster that he wanted to; that the only effect that the bulletins had was to prevent his making a fake or false price for plaster in order to give a rebate to a board purchaser; that Newark never had any agreement or understanding of any kind with respect to white plaster or any other gypsum product than board. Chism of Texas testified that he understood at all times that the price fixing provisions in the two licenses which Texas signed applied only to patented board manufactured and sold by Texas under the licenses, and that Texas had no agreement or understanding in respect of plaster prices or the prices of

miscellaneous gypsum products. In this state of the evidence, a finding that the licenses were executed with the intention of raising and stabilizing the prices of unpatented materials, and that they were therefore not bona fide, would not be warranted.

It may be assumed, indeed the evidence shows, that the parties to the license agreements were aware that settlement of the litigation, by the signing of the licenses, and the ending of the price war which had demoralized the industry, and the fixing of prices by USG at levels which would presumably be profitable, would as a matter of normal economic consequence improve general conditions in the industry and therefore result in better prices for all products. In a letter written to McCrady of American on April 12, 1928, by Griswold of the same company (Exhibit 141, a declaration binding only upon American), Griswold says: "There is no question but that if the Wall Board market were fixed up the Wall Plaster market would automatically be affected at the same time." Griswold testified, when asked whether he had discussed with Avery whether a stable price for board would have an effect upon plaster or tile prices, that "we probably exchanged views on the possibility of that being the case, because that naturally would follow, that if prices on one of the principal products of a company were at a fairly remunerative basis, and had been changed to that basis, and another article they sold was sold below the cost of manufacture, it was natural to figure that it would influence to a certain extent
8822 the lower prices, that a man wouldn't be trying to make all of his money on one product he was selling, and giving the other one away." Lenci stated frankly that, since under the price protective provisions a licensee would not be free to give away plaster or to sell it at an extraordinarily low price in order to influence the sale of board, that might have the effect of stabilizing plaster prices as compared with their condition prior to the execution of the licenses. It is, indeed, conceded by the defendants that although after the signing of the May 1929 licenses the bulletins established board prices at the levels which USG had been following just prior to the licenses, subsequently, until August 6, 1929, and (except for Texas) after the execution of the November 1929 agreements, the prices on patented gypsum board were advanced over what they had been during the price war, and that the prices of other gypsum products improved during the same period over their condition during the price war. This is discussed

more particularly in topic VI (1) and (3) of this opinion. But these considerations evidence no improper intent disclosing bad faith in the execution of the license agreements. The primary purpose of USG in granting the licenses was the settlement of litigation, the collection of damages for infringement, the obtaining of royalties, the fixing of a profitable price on patented board, and the securing of the various advantages which would normally flow from the general manufacture and sale of the superior product. The primary purpose of the licensees in signing the licenses was the obtaining of the right to make the superior product and the settlement or avoidance of litigation. The granting and accepting of the licenses with these primary purposes and with the normal expectation also, by the licensees, or some of them, that USG would fix a reasonably profitable price on board was, as has been demonstrated, lawful. That being true, the fact that the parties knew that as a matter of economic consequence the price of plaster and miscellaneous gypsum products would also improve cannot taint with bad faith the execution of the license agreements. A contrary view would make unlawful the incidental consequences of lawful patent licensing.

4. *Intent to effectuate improper restriction upon the distribution of gypsum board, plaster and miscellaneous gypsum products; specifically, to "eliminate" jobbers through the discontinuance of a sales discount:*

In the theoretical economic sense a jobber is a functionary in the wholesaling process. He buys from the manufacturer, or from another wholesaler who has bought from the manufacturer, and sells to the dealer. The jobber's service is that of relieving the manufacturer, or in some instances the wholesaler, from the necessity of direct contact with the dealer—this being accomplished by the jobber's sales force.

As explained in the statement of facts at the outset
8823 of this opinion, in the gypsum industry USG and the several licensees are the manufacturers of gypsum products, and the dealers in such products are largely retailers of building materials and mason supplies.

The price bulletin issued by USG on May 23, 1929 (Exhibit 404, a declaration binding only upon USG), immediately after the execution of the May 1929 licenses, had fixed the minimum list price at which the licensees might sell patented board made by them to dealers. On May 24, by a further bulletin (Exhibit 408, a declaration binding only upon USG), USG authorized the sale of such board to

jobbers at a 10% discount from the dealer price. On August 8, 1930, USG by a bulletin (Exhibit 430, a declaration binding only upon USG) withdrew this discount. This bulletin stated: "Effective this date the price to jobbers and distributors is the same as the price to the regular dealer trade, as per our letters * * * [of various dates]" establishing prices to dealers. The reason for the withdrawal of the discount will be discussed in topic VI (4) of this opinion.

The evidence introduced by the Government fails to establish that the license agreements were executed with an intent to eliminate jobbers through this withdrawal of discount and that they were on that account not bona fide. The witnesses examined on this subject all testified that there was no agreement or understanding whereby jobbers would be eliminated from the gypsum board distributive system, and no understanding or agreement that a jobber discount would be discontinued and the price to jobbers made the same as the dealer price. Thus Lenci of Ebsary testified that he did not enter into or know of any agreement or understanding that jobbers would be eliminated from the distributive system. He stated further that it was not his understanding that there was anything in the license agreement executed by Ebsary, or in the bulletins, which prohibited the selling of Ebsary's goods to jobbers. He testified also that at the May meetings in Chicago, when the Certain-teed, Niagara and Ebsary licenses were signed, there was no agreement to eliminate jobbers. George M. Brown of Certain-teed stated that the only agreements he had with Avery or anyone in USG were those contained in the written licenses. Black testified that it was his understanding that there was no prohibition in the USG-American license (of November 25, 1929) against American's selling to jobbers. The issuance, immediately upon execution of the May 1929 licenses, of the bulletin of May 24 (Exhibit 408) providing for a discount to jobbers evidences that at that time it was intended that sales to jobbers should be made.

The Government refers to a letter of November 12, 1929 (Exhibit 181, a declaration binding only upon American), written by Kling to Avery before the signing of the November 24, 1929, agreement between American and
8824 USG. Kling asks Avery, among other things, for "Your approval of our (4) Jobbers—the Fairmount [*sic*] W. P. Co., the Toledo P. P. Co., the Cleveland Gypsum Co., and Abbey Co." To this Avery responded under

date of November 16, 1929 (Exhibit 182, a declaration binding only upon USG):

> • • • You ask for our approval of your jobbers. Under paragraph 9 of the contract you have the right to sell jobbers (being those who do not manufacture but buy and sell plasterboard or gypsum wallboard in straight cars or in mixed cars with other building material and who do not sell at retail) without any approval from us. If the jobbers you name are regular jobbers as above stated, then you would have the right to sell the patented product to them. • • •

The letter from Kling evidences that American was selling to jobbers and desired to continue doing so. Neither that letter nor the one from Avery is any evidence of an intent to "eliminate" them or withdraw the discount. On the contrary these letters indicate an intent to continue to deal with jobbers.

In the bulletin of May 24, 1929 (Exhibit 408), whereby the discount to jobbers was established, Henning of USG said: "You will please send us a list of the jobbers to whom you are selling patented board." Lenci of Ebsary testified that at a licensee meeting on June 6, 1929, Henning discussed the question of jobbers in the industry and asked the licensees to send him the names of those to whom they were selling as jobbers. The Government refers to this as a move to eliminate jobbers gotten under way as soon as the industry was once organized under the license agreements. But this request for the names of jobbers and the (undefined) discussion of the question of jobbers in the industry are equivocal in respect of any intent to eliminate them or withdraw the discount. What Henning's purpose was in obtaining the names is speculative. He may have desired them in order to satisfy himself by investigation that the persons named as jobbers were really jobbers, rather than dealers.

Although the charge in the complaint of improper restriction upon distribution includes plaster and miscellaneous gypsum products, *i.e.*, unpatented materials, as well as gypsum board, there is no evidence concerning any dealings by USG or the licensees with jobbers in respect of plaster and miscellaneous gypsum products.

It cannot be concluded that the license agreements were executed with intent to "eliminate" jobbers, and that they were for that reason not bona fide.

(5) *Intent to fix the prices at which manufacturing distributors resell gypsum board*: The term manufacturing distributors is applicable to companies which manufacture and sell gypsum plaster but which do not, for lack of investment in the large amount of plant equipment necessary in the making of gypsum board, manufacture board. In order to be able to market a full line of products, the manufacturing distributors purchase gypsum board from USG or one or more of its licensees. The purchases are made at a discount, and the sales of the board are
8825 made to the same dealer trade as that to which USG and its licensees sell their board, and therefore are made in competition with USG and its licensees. As pointed out in the statement of facts at the outset of this opinion, both the May and the November 1929 license agreements provided that a licensee might not sell patented gypsum board to manufacturing distributors without the written consent of USG. The manufacturing distributors referred to in the evidence are the Structural Gypsum Corporation, of Linden, New Jersey; the Connecticut Adamant Plaster Company, of New Haven, Connecticut; and the Oakfield Gypsum Products Corporation, of Oakfield, New York, hereinafter referred to as Structural, Connecticut Adamant, and Oakfield, respectively.[46]

There is no substantial evidence that the license agreements were executed with intent to fix the prices at which manufacturing distributors resell gypsum board. All the witnesses examined on the subject testified that there was no understanding or agreement of any kind that the resale prices of such distributors should be regulated or controlled. Neale of Atlantic stated that neither he nor his company was ever a party to any understanding or agreement to control resale prices of manufacturing distributors. Whittemore of Certain-teed stated that he fully understood that the only prices which USG could fix under the license agreement (his reference was to the May 1929 agreement) were the prices of patented articles made by his company, that USG had no right to control any price on board except the price at the first sale made by Certain-teed, and that he

46 The bill of particulars lists as manufacturing distributors, in addition to those named in the text, the American Cyanamid & Chemical Corporation, of New York, N. Y.; The Calvin Tomkins Company, of New York, N. Y.; the Grand Rapids Plaster Company, of Grand Rapids, Michigan; the Michigan Gypsum Company, of Grand Rapids, Michigan; The Alabastine Company, of Grand Rapids, Michigan; and the Wasem Plaster Company, of Fort Dodge, Iowa. No evidence was introduced concerning those companies.

understood that USG's right to fix prices did not extend to resales by either dealers or manufacturing distributors. Lenci of Ebsary said that while he at one time thought that the ownership of a patent carried with it the right to control resale prices, this misapprehension had been acquired from something he had read and was not the result of anything that had been said or done at any licensee meeting or of any understanding or agreement with USG or anyone else, and that his erroneous impression was corrected by MacLeish, USG's attorney, at one of the licensee meetings in 1932. He testified, further, that notwithstanding his impression up to that time, at no time had it been his purpose or that of Ebsary to control the prices or practices of manufacturing distributors, and that they at no time had any understanding or arrangement or agreement with anyone to the effect that Ebsary would control or attempt to control the resale prices at which manufacturing dis-
8826 tributors or any of them sold board purchased from Ebsary. Stromquist testified that Universal never at any time had any agreement or understanding as to what resale prices should be charged by the manufacturing distributor to which it sold, to wit, Oakfield.

The clause of the licenses forbidding sales to manufacturing distributors without the written consent of USG does not, looked at by itself, constitute evidence of an intention to control the prices of such distributors. It is equivocal on that issue. How this clause was applied in practice will be commented upon in topic VI (5) of this opinion.

Nothing in the record warrants the conclusion that the license agreements were executed with intent to fix the prices at which manufacturing distributors resell gypsum board, and that they were on that account not bona fide.

We conclude in respect of the second aspect of the first question of fact in the case that the evidence fails to show that the license agreements were executed with intent to gain objectives beyond the proper limits of a patent monopoly in any of the respects charged.

It is, therefore, concluded, in respect of the whole of the first issue of fact, that the evidence fails to establish that the license agreements were entered into by the defendants not as bona fide license agreements but to give color of legality to a combination to restrain trade in violation of the Sherman Act.

VI

The Operations of the Defendants and the Limits of the Patent Monopoly

Notwithstanding the conclusions reached in respect of the first issue of fact, it still remains to determine whether or not the actual operations of the defendants were carried beyond the proper limits of the patent monopoly and licensing thereunder, *i.e.*, beyond the activities contemplated by the agreements as written and into the field denounced by the Sherman Act. This is the second issue of fact in the case. It is charged (1) that the price of gypsum board was raised and fixed at arbitrary and non-competitive levels; (2) that improper standardization of gypsum board and its method of production was accomplished; (3) that the level of prices of unpatented materials—plaster and miscellaneous gypsum products—was raised, maintained and stabilized; (4) that improper restriction upon distribution of gypsum board, plaster and miscellaneous gypsum products was effectuated; and (5) that the prices at which manufacturing distributors resold gypsum board were fixed.

8827 (1) *Raising the price of gypsum board*: It is pointed out in topic V (1) of this opinion that the charge in the complaint that the defendants raised and fixed the prices of gypsum board at arbitrary and non-competitive levels, alleges nothing illegal where bona fide patent licensing is involved, for the reason that under the patent law it is the right of a patentee to fix the price of the patented product at such levels as he chooses and to require his licensees to sell at the price thus fixed. The question whether or not at the time of the execution of the license agreements there was an intent by the parties that the price of gypsum board should be raised to high levels has been discussed only because of its possible bearing upon the question of the bona fides of the agreements. It has been concluded that no such intent is shown. It is therefore not necessary to determine whether or not the price of gypsum board was actually raised to high levels. But it may be noted that the evidence is as follows: After the signing of the May 1929 licenses by National, Certain-teed, Ebsary and Niagara, the USG bulletins established board prices at the levels at which USG had been selling board just prior to the execution of these licenses. For example, the price bul-

letin of May 23, 1929 (Exhibit 404, a declaration binding only upon USG), set 3/8" standard board at $20 per M square feet on the Oakfield, New York-Grand Rapids, Michigan, etc. mill base. On the New Brighton, New York, mill base the figure was $22.60; on the Charlestown, Massachusetts, mill base, $23.65; on the Buffalo, New York, Loveland, Colorado (mixed car shipments), and Philadelphia mill bases, $22.73, $30 and $22.60; respectively. These were the first prices announced after the signing of the May licenses. Lenci of Ebsary testified that these prices were about what USG was getting for its board at the time, and higher than Ebsary had been getting. Subsequently, until August 6, 1929, and (except for Texas) after the execution of the November licenses, the prices were advanced over what they had been during the price war. This is admitted by the defendants—reference being made to Exhibits 410, 413, 414, 416 and 33 (declarations binding only upon USG), the last bringing the prices down to February 12, 1940. But it is not in dispute that these prices did not exceed those which prevailed prior to the first license (the Beaver license) and the price war. Since 1935 the prices have been lowered so that for the past several years wallboard has sold for $23 per M square feet and lath for $13, as compared with $30 and $15-$16, respectively, before the first license. This is attested by Exhibit 33 and Exhibit 34 (a declaration binding only upon USG) and by the testimony of Griswold of American.

While the charge of the Government, as stated in the complaint, is that the price of gypsum board was raised and fixed at arbitrary and non-competitive levels, the essence of the Government's contention on this subject, as made
8828 in the Government's briefs, is that it was illegal for USG to fix, and for the licensees to abide by, the board prices at all. Its reliance is upon the ruling in *United States* v. *Socony-Vacuum Oil Co.* and *United States* v. *Bausch & Lomb Co.*, referred to in topic III of this opinion, to the effect that price fixing, reasonable or unreasonable, is unlawful *per se*. But, as pointed out in topic III, neither of these cases involved patents. And neither of them purports to overrule the *General Electric* case which, as demonstrated in topic II, legitimatizes price fixing under patent license agreements and therefore permits the establishment of prices at "arbitrary" and "non-competitive" levels.

(2) *Was there such standardization of gypsum board and its method of production (specifically, by the elimination of*

the manufacture and sale of open-edge board, seconds and No. 2 board, and by the restrictive provision of the May 1929 licenses concerning the use of the bundling process) as is beyond the proper limits of the patent monopoly?

Open-edge board: It is not in dispute that Texas, Certain-teed and Ebsary, the only companies which prior to their licenses had made open-edge board, discontinued its manufacture and sale once they had acquired the right to make closed-edge board. It may be assumed that the other licensees, who had not manufactured the open-edge board, did not commence its manufacture. But it was pointed out in topic V (2) that according to the evidence the open-edge board was wasteful and not desired by the trade, that the primary purpose of Texas, Certain-teed and Ebsary in taking their licenses was to acquire the right to make and sell the superior closed-edge board, and that a concomitant expectation that the open-edge board would be discontinued was not beyond the proper limits of the patent monopoly and licensing thereunder. It follows that the actual discontinuance of manufacture and sale of open-edge board by Texas, Certain-teed and Ebsary, and the non-manufacture and sale of such board by the other licensees, was not illegal. Since it was lawful to take the licenses to make the superior board, it was not unlawful not to make and sell the uneconomic open-edge variety. The normal economic consequence of what is lawful cannot be unlawful. As pointed out in topic II, at the time the General Electric-Westinghouse license was executed in 1912, about 50% of the total number of lamps sold were of the ordinary carbon filament type, but after nine years of operation under the license the percentage of tungsten filament lamps increased, because of their superior quality, to some 97% of total production, that is to say, the carbon filament lamps substantially disappeared from the market. It was not concluded in the *General Electric* case that on this account the operations of the parties under the General Electric-Westinghouse license had been carried beyond the proper limits of the patent monopoly.

8829 *Seconds and No. 2 board*: The Government asserts that in 1929 USG issued bulletins under which the minimum prices at which seconds and No. 2 board could be sold were raised until they were the same as that for standard board, and that since this occurred there has been no sale of seconds and No. 2 board. The prices fixed by

the bulletins are set forth in the margin.[47] It appears not to be disputed by the defendants that the effect of the bulletins was to set the minimum price of seconds and No. 2 board at the same figure as that for standard board, and in the comments to follow this will be assumed, although, as will be noted from the bulletin prices set forth in the margin, No. 2 board stood on the Oakfield, New York, basing point at the same price as No. 1 only from June 26 to July 9, 1929, and seconds at no time reached the same figure as the standard board; also on the New Brighton, New York, basing point No. 2 board stood at the same price as No. 1 only from June 26 to July 9, 1929, and the seconds at no time reached the same price as the standard board.

The evidence fails to show that there was a complete elimination of either seconds or No. 2 board. C. O. Brown of Certain-teed testified that on December 3, 1929 (he was referring to Exhibit 236, a memorandum from Henley of Certain-teed to Coffin of the same company[48]), Certain-teed was making seconds and that every company unavoidably

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47 The bulletins referred to are Exhibits 404 of May 23, 1929; 410 of June 7, 1929; 411 of June 19, 1929; 413 of June 26, 1929; and 414 of July 9, 1929. (The exhibits are declarations binding only upon USG.) These bulletins show that: On May 23, 1929 (Exhibit 404), the price of 3/8" #1 Grade (standard) wallboard f.o.b. Oakfield, New York; Gypsum, Ohio; Plasterco, Virginia; Grand Rapids, Michigan; Ft. Dodge, Iowa; Southard, Oklahoma; Sweetwater, Texas; and Acme, Texas, was $20 per M sq. ft.; of #2 Grade wallboard of the same dimension, $17.50 per M sq. ft.; and of seconds of the same dimension $15 per M sq. ft. On June 7, 1929 (Exhibit 410), the price of #2 board for the same dimension and basing points was raised to $18.75, and the price of seconds to $16.25, per M sq. ft., no change being made in the price of standard board. These same prices were continued by the bulletin of June 19, 1929 (Exhibit 411). On June 26, 1929 (Exhibit 413), #2 board was priced at $20, the same as the standard board; and seconds were priced at $17.50. On July 9, 1929 (Exhibit 414), standard board went to $22.50, seconds remained at $20, and no mention was made of #2 board, the same remaining therefore at the previous figure of $20 per M sq. ft.

On May 23, 1929 (Exhibit 404), the price of 3/8" #1 Grade (standard) wallboard, based on New Brighton, New York, was $22.60 per M sq. ft.; of #2 Grade of the same dimension, $20.10 per M sq. ft.; and of seconds of the same dimension, $17.60 per M sq. ft. On June 7, 1929 (Exhibit 410), the #2 board was raised to $21.35 per M sq. ft.; the seconds to $18.85; and, no change being made in the standard board price, it thus remained at $22.60. On June 19, 1929 (Exhibit 411), no price change was made for the New Brighton, New York, basing point, and prices therefore remained the same on standard, #2 board, and seconds. On June 26, 1929 (Exhibit 413), the New Brighton price for 3/8" #2 board was changed from $21.35 per M sq. ft. to $22.60; and the seconds from $18.85 to $20.10; no change was indicated in the standard board. On July 9, 1929 (Exhibit 414), the 3/8" standard board based on New Brighton was priced at $25.10 per M sq. ft., the seconds at $22.60; no change in price of #2 board being indicated, that remained at $22.60.

The foregoing figures are given as illustrative. The bulletins refer also to prices f.o.b. other basing points.

48 This memorandum (a declaration binding only upon Certain-teed) states that the writer is endeavoring to work out a seconds policy with USG.

does. Neale of Atlantic testified that as his company
8830 improved in the art of board manufacturing naturally fewer and fewer seconds were made. Fuller, in a letter of May 24, 1927 (Exhibit 279, a declaration binding only upon Atlantic), referred to in topic V (2), mentioned the policy of Atlantic to sell as few seconds anywhere as possible, and pointed out that seconds will run into a much higher percentage during the period of getting a new wallboard plant running smoothly than they should later on. In the same letter he referred to Atlantic's hope of disposing of the necessary output of seconds with as little damage to established markets as possible. This is the only evidence on the subject and it shows a diminution rather than an elimination of seconds. It shows nothing concerning No. 2 board. Assuming, however, that seconds and No. 2 board went wholly off the market as a result of the bulletins, there would be no illegality.

As explained in topic V (2), a second was a defective board, and No. 2 board was made of inferior material and accordingly its sale would be harmful to the reputation of the first quality product. C. O. Brown testified that the selling of seconds is harmful to the reputation of the perfect grade of any manufactured product. Protection by a patentee manufacturer of the quality of his product is important commercially, for if quality and reputation for quality descend so will demand and price. It would have been lawful for USG as patentee, if it so desired, to refrain from making and selling No. 2 board and, to the extent that they were made in the normal process of manufacturing standard board, to refrain from selling seconds. Similarly, it would have been lawful for USG directly to require this of its licensees in order that their sale of inferior products would not damage the reputation of the board produced by USG. Since the No. 2 board and seconds were, as stated in topic V (2), by definition board made under the patents, it was lawful for USG to fix the minimum price at which they were sold. Accordingly, it could fix the price of all patented board products at the same figure. And if the purpose of this was indirectly to accomplish a diminution or elimination of the sale by the licensees of the inferior products, this was lawful. In the General Electric-Westinghouse license there was a restriction against selling second grade material in the form of refilled burned out lamps. If such a direct prohibition is lawful, the same end may be reached indirectly by pricing all patented products, whether inferior, defective, or standard, at the same figure.

In the instant case, if the licensees desired to try to sell defective or inferior patented products at the price established for the standard board, they were free to do so, although this would have been difficult economically.

The Government refers to *Standard Sanitary Mfg. Co.* v. *United States,* referred to in topic II, as supporting its contentions concerning the elimination of seconds. That case is reviewed below in topic VIII in the course of discussion of authorities especially relied upon by the Government. It is sufficient to point out here that the "seconds" which
8831 it was purposed to eliminate from the market in that case were not patented products.

The bundling process: It has been pointed out in topic V (2) that the May 1929 license agreements and the Certain-teed supplemental license of July 3, 1929, granted rights under the Birdsey patent No. 1,696,877 and required that the licensees use this bundling process and no other, but that the November 1929 licenses did not contain this restrictive provision. Since the bundling patent covered merely a process of packaging, it obviously could accomplish no standardization of board as such. There is no evidence that during the period from May to November, when the restrictive provision was in the licenses, it drove off the market any other process of packaging, or that there was any other process (except for lath, the common and uneconomic method of tying with wire); and the evidence shows that use of the bundling process, since execution of the November 1929 licenses, has been on its merit, for lack of a better one. There is no evidence that the restrictive provision will be reintroduced into the presently outstanding licenses; its absence from November, 1929, until August 15, 1940, the date this action was filed, indicates that its reintroduction is unlikely. There is no evidence that the elimination of this provision in November, 1929, was in anticipation of the instant action, or of any other antitrust proceeding. Under these circumstances, the question of the legality of the restrictive provision has become moot, and its presence in the May licenses is not a foundation for equitable restraint. In *Standard Oil Co.* v. *United States,* cited in topics II and III, it appeared that certain patent license provisions the legality of which was questioned were voluntarily cancelled prior to the entry of a decree below in respect of other issues. The Supreme Court held that since the relief sought was an injunction and hence related only to the future, the question of the validity of such pro-

visions had become moot. In *Industrial Ass'n* v. *United States*, 268 U. S. 64, 84 (1925), the Court said concerning injunctive relief sought in respect of allegedly unlawful interference with freedom of sale and purchase of building supplies:

> • • • whatever may have been the original situation, the practice was abandoned long before the present suit was instituted, and nothing appears by way of threat or otherwise to indicate the probability of its ever being resumed. Under these circumstances, there is no basis for present relief by injunction. *United States* v. *U. S. Steel Corp.*, 251 U. S. 417, 444-445.

Cf. United States v. *Hamburg-American Co.*, 239 U. S. 466, 475-8 (1916).

(3) *Was the level of prices of unpatented materials—plaster and miscellaneous gypsum products—raised, maintained and stabilized*: As pointed out in topic V. (3), it is admitted by the defendants that during the period of price improvement upon patented gypsum board after the signing of the licenses, the prices of other gypsum prod-
8832 ucts increased over their condition in the 1927-1929 price war. If this increase was but the incidental economic result of the general industry betterment and the improvement in the prices of patented board, themselves consequent upon the settlement of the litigation and the execution of the licenses, it was not beyond the proper limits of the patent monopoly because the settlement of the litigation and the execution of the licenses were lawful. If, however, the increased price of unpatented materials was the result of some device adopted or action taken to bring about such an increase, rather than of the operation of economic law, then it was unlawful as beyond the proper limits of the patent monopoly.

The Government relies upon the bulletin provision set forth in the statement of facts at the outset of this opinion that "Any sale of patented products, though ostensibly made at or above the minimum price established by licensor, will nevertheless be considered a violation of the provisions of the license if licensee directly or indirectly reduces the actual price charged by licensee below such minimum price • • • by reducing the price of other products" • • •" (Exhibit 37, a declaration binding only upon USG, a bulletin of February 6, 1939, page 2) This, it will have been noted, is but part of a larger provision concerning rebates and allow-

ances—a price protective provision. The Government contends that the portion quoted was but a device to raise, maintain and stabilize the price of plaster and miscellaneous gypsum products, and that it was effectively applied by the defendants to that end. To the contrary the defendants assert that the provision in question is a proper price protective measure and that it was not abused. That such a price protective provision is proper in a patent license has already been concluded in topic II of this opinion, where the terms and conditions of the licenses in the instant case were compared with those in the *General Electric* case. And the evidence in the instant case fails to establish that in operation this provision was used illegitimately, *i.e.*, to raise, maintain and stabilize the price of unpatented materials.

The Government introduced numerous exhibits in support of its contention that the bulletin provision was improperly applied. Those discussed below are typical. Exhibit 489 (a declaration binding only upon USG) is a letter of March 31, 1933, from Board Survey to Ebsary which advised of a complaint that Ebsary had violated the minimum price on patented gypsum board through the device of rebating by giving away plaster to a dealer, Wallace & Herring, of Alexandria, Virginia, in connection with a sale of patented board. The letter sought advice in detail as to

> the sales of board to Wallace & Herring and specific
> 8833 advice also as to any donations or credits made in
> conjunction with such sales.[49]

Exhibit 490 (a declaration binding only upon Ebsary) is an intra-company letter of April 10, 1933, from Diegel, general sales manager of Ebsary, to Lenci, its secretary, stating that in the sales to Wallace & Herring inquired about by Board Survey, Ebsary secured "regular prices on the board and regular prices on the plaster." Exhibit 491 (a declaration binding only upon Ebsary) is Ebsary's reply of April 12, 1933,

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49. The body of this letter reads as follows:

"We are advised that your company has recently sold wallboard and/or plasterboard embodying the claims and inventions of the patents under which you are licensed to Wallace & Herring, Alexandria, Virginia at prices below the licensor's minimum price to you for such board in such market.

"Specifically, that you did sell this firm a mixed carload of plaster and patented board and did not invoice or charge to this firm a certain amount of plaster, and this was also handled so as to reflect to the said Wallace & Herring, Alexandria, Virginia a rebate on the patented board they purchased from you.

"Please advise in detail as to your sales of patented board to this firm, and specifically advise us of any donations or credits made in conjunction with your sales of said board."

written by Lenci in answer to the Board Survey charge of March 31, 1933. In this letter Lenci advised that Ebsary has secured from Wallace & Herring in every case the full bulletin prices for wallboard or plasterboard under the license agreement, and that no special price was made to induce board business.[50] Following this, on April 14, 1933, by Exhibit 492 (a declaration binding only upon USG), Board Survey wrote Ebsary, complained that the letter of April 12, 1933, was not a full answer to the March 31 charge, and sought advice as to whether or not Ebsary had donated plaster to Wallace & Herring so as to reflect to it a rebate on purchases of the patented board. To this Ebsary replied on April 20, 1933, by Exhibit 493 (a declaration binding only upon Ebsary), "we wish to state definitely that we have made no donation of plaster to these people. Furthermore, that we did not make them any special price on plasterboard in order to induce an order for board." Exhibi. 494, a letter of June 15, 1933 (a declaration binding only upon USG), involves a similar complaint against Ebsary in respect of sales of board to the Waltham Lime Company, of Waltham, Massachusetts. This letter stated that the Waltham Company had recently sold plasterboard manufactured by Ebsary at a price which would seem not possible if Ebsary's sales of board to this dealer had been made at the minimum fixed by the licensor, and that it is alleged that Ebsary's sales of plaster had been at less than the market price in order to reflect a lower price than the licensor's minimum.

In reply to this Ebsary, under date of June 20, 1933 8834 (Exhibit 495, a declaration binding only upon Ebsary), asserted that its sales of board to the Waltham Company were strictly in accordance with the bulletins issued under the license agreement, and that sales of plaster to this dealer were made on the same basis as the prevailing prices made by Ebsary's competitors for similar business, and not with the intent to influence board sales. A letter of June 15, 1933, to Ebsary by Board Survey, Exhibit 497 (a declaration binding only upon USG), advised of an alleged sale of plaster by Ebsary to the "Liberty Coal

50 The body of this letter reads thus:

"Referring to your letter of March 31st with reference to Wallace & Herring, Alexandria, Virginia, we wish to advise that we have secured from them in every case the full Bulletin price for wallboard or plasterboard under the License Agreement.

"Whatever sales of plasterboard have been made to this firm have been made at the prevailing price and no special price made to induce board business."

Company, Chelsea, Massachusetts," at less than the market price in order to reflect to this customer on its purchases of patented board a price lower than the licensor's minimum. By a letter of June 20, 1933, to Board Survey, Exhibit 498 (a declaration binding only upon Ebsary), Ebsary repudiated this charge, stating that sales of board to the "Liberty Coal & Cement Company" had been strictly in accordance with the bulletins issued under the license agreement, and that the sales of plaster had been made on the same basis as the prevailing prices charged by competitors, and not with the intent to influence board sales. Again, a letter of April 24, 1934, from Board Survey to Ebsary, Exhibit 500 (a declaration binding only upon USG), advised of an alleged violation of minimum prices on sales of plasterboard to Service Masons Supply Company, of New York, by allowances on other commodities. In Exhibit 501 (a declaration binding only upon Ebsary), under date of May 3, 1934, Ebsary denied this and specified only one carload shipment of board to Service Masons Supply Company during the preceding six months, quoted the prices, and stated that this carload was charged and paid for at the proper bulletin price and that sales of other materials were paid for at the prices prevailing in the New York market, and that no special prices or concessions of any kind were made to influence the sale of this car of board.

Lenci testified that all of these letters had to do with charges that Ebsary was rebating on its board prices through the device of cutting plaster prices in combination sales. He stated that he fully understood that USG was not attempting to fix or control Ebsary's plaster prices, and that Ebsary felt free to sell plaster at any price it saw fit provided it did not attempt to cut the price of board through the means of giving away plaster, or through charging an abnormally low price for it in a combination sale. Concerning Exhibit 500, Lenci said that it was a letter from Board Survey referring to an asserted reduction in the price of board by granting allowances in purchases of other commodities, including plaster; that Ebsary had no published price list at any time in selling plaster; that its instructions to salesmen were to sell at certain prices, but that it always felt free at any time to meet a quotation which it found existing in any territory in which it was selling. He said that
to a certain extent there was such a thing as a pre-
8835 vailing price or general price in Ebsary's territory, but that this was always flexible; that the two largest

companies operating in Ebsary's area were USG and National, and that Ebsary would naturally know about the prices those companies were selling at since its salesmen were in contact with customers at all times and kept the company well informed. Lenci stated that that influenced Ebsary in its instructions to its salesmen as to what prices they should get, since it wanted to get as much for its product as it could—that the company would have to be influenced by the USG price on plaster in determining what it (Ebsary) could get—"it would be the condition of the market. We couldn't get more, and we naturally wouldn't want to sell for any less."

Other exhibits introduced by the Government relate to asserted violations by other companies, specifically Certain-teed and National, of the minimum price on patented gypsum board by means of gifts of, or rebates upon, plaster. The exhibits relating to Certain-teed are Nos. 727, 729-738, and 746-749. Those relating to National are Nos. 758 and 759. (Each of these exhibits was received in evidence as binding only upon USG.) None of the asserted violations referred to in these exhibits relates to gypsum block, gypsum tile or Keene's cement. The Government introduced additional exhibits which concern alleged violations of the minimum price on patented gypsum board by means of gifts of, or rebates upon, roofing products, paints, insulation board, building paper and fibre board, and by means of such devices as free painting of signs, sales of company stock below the market price, donations to a ball club and receiving payments for board in certificates of deposit, rather than in legal tender. But these are not embraced within the charge of the complaint for this confines itself to plaster and miscellaneous gypsum products, which, as specified in the bill of particulars, include only gypsum block, gypsum tile and Keene's cement. It is therefore unnecessary to discuss these additional exhibits.

There is no substantial evidence in any of the foregoing exhibits that the price protective provision quoted at the outset of this sub-topic was used by the defendants as a device to raise, maintain and stabilize the price of plaster. What the evidence relied upon by the Government does show is merely this: One of the licensees would hear that patented board purchased by a dealer from another licensee was being resold at such a price as would indicate that the vendor-licensee had granted the dealer a concession below the minimum price on board: A report of this would be made to Board Survey as a probable violation of the bulletins. Board Survey would make inquiry of the vendor-li-

censee and receive an explanation. Putting this otherwise, various licensees were insisting that USG through Board Survey require obedience to the bulletin provisions
8836 in respect of prices on patented board. But they were not seeking to sustain the price of plaster, except in the sense that they were complaining against what were believed to be fake or false sales of plaster or sales at such gross diminution below the prevailing plaster price as constituted a means of rebating from the bulletin price on board. USG, on being informed of alleged rebating, was requiring the accused licensees to explain or desist. If the effect of this was to keep the price of plaster at or about the prevailing rate in the industry, this was only the incidental result of the exercise of the right of the licensor to insist upon obedience to the bulletins so far as patented board was concerned and was therefore not illegal.

We conclude that there is no substantial evidence that the conceded advance in the price of plaster after the signing of the licenses was the result of a device adopted, or action taken, by the defendants, or the result of anything other than the rise in board prices and the general industry betterment occasioned by the settlement of the litigation and the signing of the licenses.

(4) *Was improper restriction effectuated upon the distribution of gypsum board, plaster and miscellaneous gypsum products, by "elimination" of jobbers through the discontinuance of a sales discount*: As explained in topic V (4), jobbers in their proper function serve a useful purpose in the wholesaling process, buying from the manufacturer and selling to the dealer. Upon the execution of the May 1929 licenses, USG, by a bulletin of May 24, 1929 (Exhibit 408, a declaration binding only upon USG), applicable by its terms to patented board made by the licensees, authorized the sale of such board to jobbers at a discount of 10% below the minimum list price fixed for licensees' sales to dealers.

It appears, however, that jobbers in the gypsum industry occupy a somewhat ambiguous position. Higgins, at one time a division sales manager of National, testified that the terms "wholesaler," "jobber" and "distributor" have been "footballed and kicked around" and vary with different industries, and that there are no jobbers in the gypsum industry in the sense of persons who buy from manufacturers, sell to dealers, bill the dealers, carry the accounts and pay the manufacturers. Lenci of Ebsary said that in the gypsum board business it was difficult to know whether or

not a given person was a jobber. During his direct examination Spease, of the Fairmont Wall Plaster Company, named a number of persons or firms as jobbers; but on cross-examination it appeared that his statements were somewhat reckless, that he knew little of the activities of such persons or firms in recent years. Lenci testified that Ebsary largely sold direct to dealers; that it was not particularly interested in selling to jobbers, partly because it had its own sales force and therefore jobbers had little to offer in the
8837 way of service, but also because jobbers, buying at a jobber discount, would set up an unfair artificial competition. He explained that some of them who purchased board on the representation that they were acting in their proper function as jobbers, *i.e.*, as intermediaries between the manufacturer and dealers, were in fact themselves acting as dealers, reselling to contractors and ultimate consumers, and that in so doing they could undersell the regular dealer, who received no discount, with resultant bad feeling on his part toward Ebsary. Lenci explained also that some jobbers in selling to dealers would divide the discount with them, and to that extent undersell Ebsary with its own dealer-customers.

In this situation USG, on August 8, 1930, by a further bulletin (Exhibit 430, a declaration binding only upon USG), withdrew the jobber discount—that is, made the minimum price at which licensees could sell to jobbers the same as the minimum price to the regular dealer trade. As this was put by Lenci, there came a time in 1930 when Ebsary received a bulletin which "leveled off the price to dealers and jobbers." While thereafter a jobber who purchased board from either USG or one of the licensees was obliged to pay the same price as a dealer, the discontinuance of the discount did not have the effect of forbidding sales of board to jobbers if they were willing to buy at the dealer price. The evidence shows that many jobbers continued to buy board and were nevertheless able to perform a proper jobber's function. There were small dealers who, for financial reasons or lack of warehouse space, were not able to buy or store board in the minimum quantities in which the licensees were required by the bulletins to sell it. A jobber financially able to purchase a substantial amount of board and having adequate warehouse space could, though he purchased at the dealer price, resell in small lots to such dealers at an advance, because of the service he thus rendered them. The Government asserts that the withdrawal of the discount had the effect of completely eliminating job-

bers from the gypsum industry. But the record does not support this statement; there is no evidence that any jobber was put out of business altogether. On the contrary, according to Lenci's testimony, jobbers are still in business and doing a good business.

The question for determination is whether or not USG's withdrawal of the discount was lawful. Under the ruling in the *General Electric* case the answer is in the affirmative. The Court there said that it was reasonable that a patentee who manufactures and vends the patented goods on his own account should say to his licensee, "you may make and sell articles under my patent, but not so as to destroy the profit that I wish to obtain by making them and selling them myself." (272 U. S. at 490.) There was adequate reason for the establishment of one minimum price on patented board to all classes of trade—except manufacturing distributors, whose discount, allowed for a different reason, is discussed in sub-topic (5) (a) of this topic VI. 8838

USG as patentee had a legitimate interest in maintaining the price of the patented product by refusing to permit it to be sold to so-called jobbers at a discount with consequent disturbance of the minimum price structure by the artificial competition set up as above described. It is noteworthy, also, that, as pointed out in topic II, the General Electric plan of distribution, which was adopted by Westinghouse, was devised to enable General Electric "to deal directly with consumers and purchasers, and * * * to avoid selling the lamps owned by the [General Electric] company to jobbers or dealers, and prevent sale by these middle men to consumers at different and competing prices." (272 U. S. at 483.) Both jobbers and retailers were thus "eliminated." The Supreme Court found nothing illegal in this.

The Government asserts that the discontinuance of the jobber discount was by agreement between USG and its licensees and that this made it unlawful. Such an agreement would not be unlawful. As is pointed out in topic V (1), in the *General Electric* case the prices established on the patented product were a part of the license agreement itself. The authorization of the jobber discount was but a fixing of the licensee price on board to a certain class of trade; and the discontinuance of the discount was but a refixing of the price. But there is no substantial evidence in the instant case that USG and the licensees did agree upon discontinuance of the discount. Lenci of Ebsary testified that he did not enter into or know of any agreement or understanding that jobbers would be eliminated from the distributive sys-

tem of gypsum board; that Ebsary had no understanding or agreement with anyone that at some time after 1929 the jobber price would be raised to the amount of the dealer price. He said that it was not his understanding that there was anything in Ebsary's license agreement or in the bulletins which prohibited Ebsary's selling its goods to jobbers. He stated that Ebsary had no part in making up the bulletin of August 8, 1930; that "It came as an order, as a direction in the form of a bulletin."

The Government urges that Exhibits 438, 471 and 502 evidence concerted action. Exhibit 438 (a declaration binding only upon Ebsary), a letter of May 6, 1932, from Ebsary to the Board Survey Company, refers "to the recent bulletin of the United States Gypsum Company advising the licensees that selling through jobbers had been eliminated. We would advise that Daniel Duskis, Inc., Glendale, L. I. is still buying Certain-teed board through Orin F. Perry, New York." Exhibit 471 (a declaration binding only upon Ebsary) is a letter written by Ebsary on November 28, 1932, to Board Survey, again concerning a purchase by Duskis from Perry; this is referred to as in violation of the bulletin "eliminating sales of licensed board
8839 through jobbers and commission men." In his testimony concerning Exhibit 438, Lenci explained the phrasing of these letters, saying that he knew when he wrote the first quoted sentence of Exhibit 438 that all that the bulletin had done was to level off the price as between jobbers and dealers, and that the letter should have read "Referring to the recent bulletin * * * advising the licensees that selling through jobbers at a discount had been eliminated." He said that he and everyone else understood that all that had been eliminated was the right of a manufacturer to sell a jobber at a discount. Lenci explained the second sentence of the exhibit as meaning that Duskis, a Long Island dealer, was buying Certain-teed board through Perry, and that he would not do so if Perry were paying Certain-teed the dealers' prices, "which would indicate to me that Perry was still getting a jobber's discount from Certain-teed." Lenci stated that he was complaining to Board Survey about a price cut by Certain-teed, specifically, that in view of the evidence of what Duskis was doing, Ebsary felt that Certain-teed was giving Perry a discount prohibited by the USG bulletin then in effect. Lenci testified similarly concerning Exhibit 502 (a declaration binding only upon Ebsary), a telegram from Ebsary to Henning of USG, dated November 8, 1934, in which it was said "Lee Story

must be eliminated immediately as a jobber."[51] Lenci explained that this was intended only as a complaint against Kelley; that he (in sending this telegram) meant that Kelley must cease giving Lee Story a jobber's discount, and that the wire should have read "Kelley must cease giving Lee Story a jobber's discount," rather than that Lee Story should "be eliminated." Lenci testified that the telegram would be thus understood by both Ebsary and the recipient. His testimony was frank and convincing, and makes clear that the correspondence above described was in the nature of complaints that particular licensees had made arrangements with jobbers or dealers to give discounts or lower prices on patented board in violation of the minimum price bulletins. His explanation is consistent with his testimony that there was no elimination of jobbers but merely an elimination of their discount, and, in view of his explanation, the correspondence is not in conflict with his testimony that there was no agreement to eliminate the discount.

The Government relies upon *Eastern States Lumber Ass'n* v. *United States*, cited in topic III, and *Binderup* v. *Pathe Exchange*, 263 U. S. 291 (1923), both decided under the Sherman Act. The first of these cases involved a 8840 combination of associations of retailers of lumber whose members agreed not to buy from wholesalers who themselves, in competition with the retailers, sold directly to the consumer, thus undermining the retailer's trade. The Supreme Court held that a retailer had the right, individually, to stop dealing with a wholesaler, but could not lawfully do so in combination and agreement with others. In *Binderup* v. *Pathe Exchange* the defendants, who controlled the distribution of motion picture films, acted in concert in canceling exhibition contracts, and in refusing to deal in the future, with the plaintiff. The Court ruled that, acting separately, each of the distributors could have refused to furnish films to the exhibitor without becoming amenable to the provisions of the statute, but that conspiracy and combination of all to prevent any from dealing with the exhibitor was illegal. These cases are not in point. They involve an agreement forbidden by the Sherman Act and not legitimatized by any other law. In the instant case,

51 The full text of the telegram is: "Lee Story and Companys man in Brooklyn is quoting on Kelly [*sic*] board up to two dollars per thousand below license bulletin prices to lumber dealers in New York City You must investigate and correct this immediately as we look to you for protection under our contract Lee Story must be eliminated immediately as a jobber. Wire us full information at once tonight."

as above demonstrated, in view of the patent law and the *General Electric* decision not only was withdrawal of the discount legitimate but also its withdrawal by agreement, had there been such an agreement, would not have been unlawful.

No evidence was introduced in support of the charge that the defendants effectuated improper restriction upon distribution of plaster and miscellaneous gypsum products through jobbers. Both the bulletin establishing the jobber discount and the bulletin withdrawing it applied in terms only to patented board.

It is concluded that there is no evidence that the operations of the defendants went beyond the proper limits of the patent monopoly by improper restriction upon distribution of gypsum board, plaster and miscellaneous gypsum products, and this whether the charge of the complaint means elimination of the jobber discount or of jobbers or of jobbing.

(5) *Were the prices at which manufacturing distributors resold gypsum board fixed by the defendants*: As stated in topic V (5), the manufacturing distributors referred to in the evidence, Connecticut Adamant, Oakfield and Structural, are engaged in making and selling gypsum plaster, but purchase the gypsum board which they sell from other manufacturers, *i.e.*, from USG or one or more of the licensees. A discount off the bulletin price to dealers was allowed them. The Government urges that control of resale prices is evidenced by (a) the use of USG of the provision in the May and November 1929 licenses requiring USG's written consent to the sale by licensees of patented board to manufacturing distributors; (b) the supplying to manufacturing distributors by their licensee-sellers of the bulletin dealer prices on board; (c) the policing of manufacturing distributors' sales of board; and (d) the limiting of the manufacturing distributors' discount to approximately the cost of handling the board.

8841 (a) *Use of the consent to sell clause*: The testimony is uniformly to the effect that USG freely, and without conditions attached, granted consents to the licensees to sell board to manufacturing distributors. Tomkins of Newark, Kelley and The Calvin Tomkins Company (a wholly owned subsidiary of Newark which conducted Newark's sales business), testified that USG never refused a request by any of his companies for permission to sell a

manufacturing distributor, that no consent once granted was ever withdrawn, that no conditions, oral or written, were ever attached to the consents except that they were revocable, and that USG never threatened to withdraw a consent once granted. Lenci testified that the only occasion when USG ever refused a request by Ebsary to sell a manufacturing distributor was in the case of the Cardiff Gypsum Company; that all other requests had been granted by USG, and that there were never any conditions, written or oral, attached to the granting of such consents.[52] Lenci testified, further, that there was never with respect to these consents any arrangement, understanding, or agreement with USG or anyone else that Ebsary would police, supervise, or seek to control manufacturing distributors' resale prices or practices. He said that there never was an instance in which a consent issued by USG to Ebsary was withdrawn, or where USG or anyone connected with it threatened to withdraw a consent once issued; that no statement was ever made to him by anyone connected with USG that if Ebsary did not control or seek to control the resale prices of manufacturing distributors to whom Ebsary sold under the consents, they would be withdrawn.

Similarly, the manufacturing distributors themselves testified that they never understood that the consents to sell which had been issued by USG to their respective suppliers would be withdrawn in the event that the distributors did not resell gypsum board at given prices. Thus Hansen stated that he never had any knowledge that any conditions had been attached by USG, or anyone else, to the consents given by USG to Oakfield's suppliers. McCormack could recall no threat by anyone at any time that USG's consent to Ebsary or Kelley to sell Structural would be withdrawn. Asked whether he was ever told that any conditions had been attached by USG to any consent which it had granted Ebsary or Kelley to sell Structural at a discount, McCormack replied that he did not know "until quite late in this picture that we ever were selling under a consent." Kellogg of Connecticut Adamant testified that no one from USG or any other board manufacturer ever threatened to cease to

52 The Government asserts that the evidence shows that the reason for USG's refusal to give its consent to Ebsary to sell the Cardiff Gypsum Company was that Cardiff was known as a price-cutter on plaster. But the evidence concerning refusal to grant the Ebsary request was received solely on the issue of whether the defendants were attempting to control the prices of plaster.

sell his company on account of prices it charged on resales of board.

8842 (b) *Supplying to manufacturing distributors USG's minimum dealer prices on board*: It is not denied by the defendants that when the licensee-manufacturers sold gypsum board and lath to manufacturing distributors they from time to time furnished the latter with information concerning the prices fixed by the bulletins for sale of these products by the licensees to dealers. The Government urges this circumstance as evidencing either a contractual or a coercive arrangement whereby the manufacturing distributors were themselves obliged to sell to dealers at the bulletin prices. The witnesses, however, gave a different explanation. The discount allowed to manufacturing distributors was 12½% on lath and 15% on board off the bulletin price to dealers. Tomkins, testifying in respect of the sending by Kelley and The Calvin Tomkins Company of price lists to Oakfield, Structural and Connecticut Adamant, explained that in quoting a manufacturing distributor on gypsum board a licensee did not, as a matter of practice, deduct the allowed discount from the bulletin price to dealers and then quote the resultant net price. The licensee advised the manufacturing distributor of the price it was to pay by sending it the bulletin price to dealers; this enabled the distributor to arrive at the price it must pay by deducting the discount from the bulletin dealer price for any particular sales destination. Therefore, the manufacturing distributor was informed promptly by the licensee-supplier of any change in the bulletin price to dealers on board because this would affect the manufacturing distributor's cost. Kellogg of Connecticut Adamant, which as a manufacturing distributor had purchased board from USG for about ten years and prior to that had bought from Ebsary and Kelley, testified in respect of purchases from USG that his policy was to sell to Connecticut Adamant's customers at the prices he obtained from USG—the market price—and that for that reason, as well as in order to know what Connecticut Adamant had to pay for the board, he would ask USG what the delivered price to a dealer at a particular point of delivery was. He said that he always wanted to know the dealer price, because that was what the board cost Connecticut Adamant—the dealer price less the applicable discount. McCormack said that he had never at any time received a

USG licensee bulletin, but that it was necessary at all times during the relationship of Structural with USG, Ebsary and Kelley, from whom it purchased, to know in advance through price lists the supplier's dealer price for patented board, because that was the price on which Structural's discount was figured. Structural had to know what the board was going to cost before it made contracts for its resale. Hansen testified that Oakfield always bought board at a discount. Asked what its prices were and what relationship, if any, they bore to the prices of Kelley, its supplier, he responded that the price which Kelley charged Oakfield
was the price Kelley charged its dealers less dis-
8843 count. Therefore, in order to know prior to selling to its own customers what the board was to cost it, Oakfield had to know Kelley's dealer price.

The manufacturing distributors themselves testified that they had no agreement with their suppliers to resell board at any particular prices. Thus Hansen stated that Oakfield had no arrangement, agreement, or understanding with Universal, Kelley, or any other supplier of board, as to the prices Oakfield should charge its dealer-customers when it resold the board. McCormack said that he could not honestly testify that Structural had any arrangement with any of its suppliers, Ebsary, USG, or Kelley, with respect to its resale price, that it was Structural's policy to resell the board at as near the supplier's price as was possible, that that was just a matter of business prudence; that Structural could not undersell its sources of supply and expect them to continue furnishing it board with which to undersell them. Kellogg testified that while he wanted to know the supplier's prices, not only to determine what the board cost Connecticut Adamant but also in order to know at what price to sell it, he nevertheless at no time had any arrangement, understanding, or agreement with anybody as to the prices Connecticut Adamant would charge for board and lath in resales; that this policy (of selling at the market price, *i.e.*, the licensee price to dealers) was determined without relation to any understanding with anybody, and was not the result of any arrangement with anyone in the gypsum business; that Connecticut Adamant had always been free to sell its products at whatever price it desired. He said, further, that no one from the gypsum manufacturing companies had ever come to him to investigate any price, and no one from Board Survey; and that no one from USG or any other board manufacturer had ever threatened

to stop selling board to Connecticut Adamant on account of prices it charged on resales.

That there were no contractual or coercive arrangements by which manufacturing distributors were compelled to resell board at prices fixed by USG is confirmed by the licensees. Lenci testified that Ebsary at no time had any understanding or arrangement with anyone to the effect that it would control or attempt to control the resale prices at which the manufacturing distributors, or any of them, sold board purchased from Ebsary. Tomkins said that his companies, Kelley and Newark, never had any agreement with any of the manufacturing distributors to whom price lists were sent that such distributors would resell board at the prices in such lists or at any other prices. Stromquist stated that he at no time had any agreement, understanding, or arrangement of any kind with Oakfield as to what resale prices that company would charge on board purchased from Universal. Griswold of American testified that Avery of USG did not at any time say anything to him to the effect that control of prices by USG through the license
8844 agreement with American would extend to anything but the first sale of the patented article. Neale of Atlantic said that he recalled no effort by himself or by his company to become a party to any understanding or agreement, at licensee meetings or otherwise, to control the resale prices of distributors.

It is apparent from the foregoing that the manufacturing distributors were kept informed by their suppliers of the minimum prices fixed by the USG bulletins for sales of board by licensees to dealers in order that the distributors might figure their own cost, since that was determined by a discount off the dealer price. It is apparent also that the distributors desired to know the dealer prices in order that they might be in a position to compete. They would not be able to sell above, and on the small margin allowed by the discount (a subject discussed in sub-topic (5) (d) of this topic VI), would not be able to sell much below, the prevailing market price. But there is no evidence that they were either contractually bound or in any way coerced to resell board purchased from the licensees at either the dealer price fixed in the bulletins or any other given price. It is obvious that the prevailing market price, at which the manufacturing distributors would for business reasons desire to sell, would normally be the USG bulletin price to dealers. This was the price at which USG and each of the li-

censees would, under the license contracts, be obliged to sell; and since they manufactured substantially all of the gypsum board in the "Eastern area," their sale price would be the prevailing market price.

(c) *Policing of manufacturing distributors' sales of board*: The Government has introduced evidence which it asserts proves such investigation and regulation of the resale prices of manufacturing distributors on gypsum board as was tantamount to control.

In respect of Connecticut Adamant: In Exhibit 463 (a declaration binding only upon USG), a letter of May 8, 1933, from Board Survey by Miller, to Ebsary, Board Survey states that it is advised that Connecticut Adamant is offering patented board, manufactured and sold by Ebsary, to the New Haven Reserve Supply Company, of New Haven, Connecticut, and other New Haven dealers, f.o.b. their warehouse in any quantity, at the licensor's minimum price to Ebsary for minimum carload lots of board, delivered at New Haven. Board Survey asks Ebsary to "Please advise." This the Government apparently relies upon as evidencing policing by Board Survey for USG of Connecticut Adamant's resale price on board. But by Exhibit 467 (a declaration binding only upon Ebsary), a letter of June 13, 1933, Ebsary replied that its customer, Connecticut Adamant, had made no sales of board to New Haven Reserve Supply Company. Lenci testified that this was a complaint by Board Survey against Ebsary; that although it
8845 involved Connecticut Adamant also and though the allegation was not spelled out in the letter, Ebsary nevertheless understood that it was a complaint not against what Connecticut Adamant was said to be doing, but against what Ebsary was alleged to be doing in respect of its price to Connecticut Adamant. He said that anyone in the industry would so construe the letter, including Miller, its writer. In Exhibit 464, a letter of May 11, 1933, from Board Survey to Ebsary (a declaration binding only upon USG), Board Survey informs Ebsary that it is advised that Connecticut Adamant sold gypsum board to the Southbury Lumber Company, of Southbury, Connecticut, at the licensor's minimum price to Ebsary and that "This would hardly seem possible if your sales * * * to * * * Connecticut Adamant * * * had been made at the licensor's minimum * * *" This the Government apparently also relies upon as evidencing policing by Board Survey for USG of the resale

price of Connecticut Adamant. But by Exhibit 468 (a declaration binding only upon Ebsary), a letter of June 13, 1933, Ebsary replied that Connecticut Adamant is rated as a manufacturer, and that the discount which Ebsary is accordingly permitted as a licensee to allow it on sales of board enables Connecticut Adamant itself to resell at the bulletin price. Lenci explained that the Board Survey complaint was not against Connecticut Adamant but against Ebsary upon the theory that, in view of Connecticut Adamant's resale price, Ebsary must have been violating the bulletin minimum for licensee sales to dealers; Board Survey had apparently forgotten the manufacturing distributor status of Connecticut Adamant.

It is clear from the foregoing that the "policing" was not of Connecticut Adamant's resale price but of Ebsary's price to Connecticut Adamant.

In respect of Oakfield: In a letter from Lenci of Ebsary to Henning of USG written March 28, 1936, Exhibit 512 (a declaration binding only upon Ebsary), and in Exhibit 513A, a complaint against Kelley addressed to Board Survey by Ebsary (a declaration binding only upon Ebsary) naming Oakfield as Kelley's customer, Ebsary alleged that the Delaware Clay Products Company, of Pittsburgh, Pennsylvania, was selling "Oakleaf Gypsum Board" to dealers at the "regular" price, and suggested that Kelley must have arrangements with Oakfield making this possible. Board Survey investigated the complaint. Kelley, on May 1, 1936, in Exhibit 514 (a declaration binding only on Kelley), stated that its sales to Oakfield were made at the scheduled (bulletin) price and that Delaware Clay Products, to whom Oakfield sold, sells board without compensation.[53] Lenci explained this situation and demon-
8846 strated that the complaint was against the licensee Kelley rather than against the manufacturing distributor Oakfield, as follows: Oakfield bought the board from Kelley at a discount and then sold it to Delaware Clay Products, which in turn offered the same board for sale at the dealer price. The margin out of which the two companies, Oakfield and Delaware Clay Products, had to make

53 Kelley's explanation, although it names Oakfield as the customer involved, is made in terms of Paragon Plaster & Supply Co. The evidence shows that that company, the Paragon Plaster Company, and the American Hardwall Plaster Company were the sole owners of Oakfield, that Oakfield was the plaster producing company for them, and that it stocked plasterboard and lath for mixed car shipments for those companies.

their selling expenses was small—15% on board, 12½% on lath, *i.e.*, this was the discount to manufacturing distributors allowed by the USG price bulletins. Presuming both Oakfield and Delaware Clay Products to pay expenses and make some profit, it appeared that if Delaware Clay Products was selling at the dealer price, Kelley must have been allowing Oakfield more than the discount permitted by the bulletins, thereby violating the license agreement. Thus it appears that the situation was again one in which a complaining licensee, in this instance Ebsary itself, inferred from the activities of the accused licensee's customer, the manufacturing distributor, that the accused licensee was violating the license bulletins. Again the investigation was not of the resale price of the manufacturing distributor, but of the discount allowed by the seller-licensee.

In respect of Structural: In a letter of May 6, 1932, Exhibit 438 (a declaration binding only upon Ebsary), Ebsary, first referring to a USG bulletin establishing a two dollar differential between board shipped in mixed carloads and board shipped in full carloads from metropolitan New York, complained to Board Survey that the Tisdale Lumber Company, of Flushing, New York, had purchased from Structural a mixed carload of miscellaneous plaster and board at carload prices. On its face this appears to be a complaint in respect of Structural's resale price. But Lenci explained that the licensees were required by the bulletin provision to charge $2 more per thousand feet on board shipped in mixed carloads than upon board shipped in full carloads (in a mixed carload there are other products and therefore less board than in a full carload) and that since the Tisdale Company had bought less than a full carload quantity of board at the full carload price, *i.e.*, the lesser price, it would appear that Kelley had not charged Structural the $2 differential. The Tisdale Company was a prospective customer of Ebsary, and Kelley's apparently cut price to Structural resulted in the latter's being able to prevent Ebsary from getting the Tisdale business. Thus Ebsary was complaining of an apparent license violation by Kelley, and not of the resale price by Structural.

The Government relies also upon Exhibits 443 and 444 (declarations binding only upon Ebsary and USG, respectively) as evidencing policing of the resale prices of Structural. These exhibits appear to be part of a series of complaints by Ebsary and replies by USG or Board Survey.

Neither of these two exhibits mentions Structural or
8847 the subject of resale prices. The other exhibits in this series comprise Exhibits 436, 437, 438, 447, 439, 440, 449, 441, 442, 445 and 446 (each of which is a declaration binding only upon Ebsary) and Exhibit 450 (a declaration binding only upon USG).[54] These exhibits, except for the replies by USG or Board Survey, appear on their face to be complaints by Ebsary concerning sales of gypsum board by Structural in small quantities. Lenci testified concerning this that by selling in small quantities Structural was giving a service to its dealer-customers which Ebsary as a licensee could not supply, because the USG bulletins required Ebsary to charge for similar deliveries a higher price than Structural was getting. Lenci had concluded from what Structural was doing that Kelley, Structural's licensee-supplier, had made a special arrangement to give Structural an excessive discount which enabled it to cut prices and indulge in the practices which rendered Ebsary non-competitive. His complaints, so Lenci testified, were based upon lack of confidence in the good faith of Kelley in selling to Structural. Lenci said that Ebsary knew that Structural had no license and no obligation with respect to maintenance of prices or other conditions binding upon the licensees. He made clear that in these complaints he was not protesting against Structural or its prices or practices but against Kelley.

It is apparent from the foregoing that when the evidence concerning the alleged control by the defendants of the resale prices on board of manufacturing distributors by "policing" such resale prices is considered as a whole, it fails to establish such control or any attempt thereat. What it does establish is that one licensee was insisting to USG that a competitor-licensee was apparently violating, and should be required to abide by, the minimum price provisions of the bulletins. As pointed out in the statement of facts at the outset of this opinion, there was a "most favored nation" clause in each of the licenses. If one licensee was permitted by USG to sell board on more favorable terms than another the license of the former was in effect being rewritten. The protest of the complaining licensee was therefore natural and one stemming from the provisions of its license agreement.

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54 The exhibits are listed in chronological, rather than numerical, order.

(d) *Limitation of the manufacturing distributors' discount*: USG fixed the price at which the licensees might sell board and lath (sometimes in this sub-topic referred to as board) to manufacturing distributors at, as above stated, 15% and 12½%, respectively, off the minimum price to dealers. The Government asserts that this was with the purpose of preventing the manufacturing distributors from doing more than barely staying in the board business or that, as the Government otherwise phrased it, the discount was set at a figure which would not permit the manufacturing distributors as a business matter to cut prices
8848 on their resales of board. The Government says that as a result they resold to their dealer customers at approximately the bulletin price at which USG and the licensees sold to dealers. This, as pointed out earlier in this topic, would normally be the prevailing market price, since USG and the licensees manufactured substantially all of the board and lath in the "Eastern area" and were the principal sellers. The Government contends that in effect, therefore, USG was controlling the resale price and that this was illegal.

Hansen of Oakfield testified that the discount at which the board manufacturers sold to manufacturing distributors gave Oakfield a very small margin of gross profit in reselling; further, that Oakfield could not get more for its board from its dealer-customers than the amount at which the latter could buy the same board from Oakfield's supplier, Kelley, and that Oakfield did not want to take any less than it could obtain. McCormack said that the only reason Structural sold board was to aid its plaster sales; that it was an accommodation to Structural to get the board from the suppliers because Structural needed it to round out its sales to dealers; that Structural, he thought, did not ever make any great profit out of the board business, although no cost study was ever made to determine that definitely. He would not say that Structural was not in the business of buying and reselling board because of the profit involved, as the company evidently made a small profit, but it was not much since a good part of the discount would have to be charged off to selling expense, handling and warehousing. He admitted, however, that, although the margin of profit was very low, Structural sometimes split its discount on board with jobbers. Lenci of Ebsary testified that generally speaking the 15% margin on board would be used up by a manufacturing distributor in over-

head and handling charges; that the basic reason for the discount was to enable the manufacturing distributors to avail themselves of the accommodation of being able to offer board in mixed carloads to their dealer-customers; that it was never designed to permit the distributors to make a profit, but to give them board which they could ship to their customers along with their other products.

Since Hansen said nothing as to net profit and McCormack said that there was a profit, though small, and Lenci's testimony, although to the effect that the discount was designed not for profit but for accommodation, indicates nothing as to the actuality of profit or loss in manufacturing distributors' resales, it cannot be concluded that there was no profit whatever. And while the testimony shows that it was an advantage to the distributors to stock the board for resale along with their plaster products, there is no evidence that it was necessary for them to have board to remain in business, none that they were threatened that board would be withheld unless they resold at the dealer price, and none that they were parties to any contract to resell at the dealer price. They were legally free to resell at
8849 any price they chose, although economically it would have been difficult for them to resell at more than the market price, other conditions being equal, and they would probably not wish to sell at less if that would entail a loss. It may be assumed that as a normal economic consequence of the setting of the discount at a figure approximating the cost of handling the board, the manufacturing distributors ordinarily resold at approximately the price, if not, indeed, at the exact price, at which USG and the licensees sold direct to dealers, *i.e.*, the prevailing market price; and it may be assumed that USG contemplated that this would occur and had in mind the protection of its minimum price structure.

But the Sherman Act does not condemn the normal economic consequences of acts which are themselves legitimate under the patent laws. Therefore the contention of the Government that USG is guilty of illegal control of the resale prices of manufacturing distributors necessarily rests upon the premise that it was unlawful for USG to fix the discount on an approximate cost of handling basis, rather than on one which would allow the distributors a substantial profit and thereby enable them to resell at less than the market price. This premise cannot be sustained. As a patent owner USG, under the doctrine of the *General Electric* case, had

a right to license the making, using and vending of the patented product upon any condition the performance of which was reasonably within the reward which the patent owner by the grant of the patent is entitled to secure. One of such rewards is extended marketing of the product. This will be promoted by additional outlets. USG might therefore properly give a discount incentive to manufacturing distributors to buy board from USG or the licensees and thereby the advantage of handling it in connection with their plaster products. But a patent franchise does not constitute the patentee a public utility whose product must be sold at the same, regulated, price to all who offer to buy. USG was not obligated under either the patent laws or the Sherman Act to sell board or to permit its licensees to sell board to manufacturing distributors. As has been noted in sub-topic (4) of this topic VI, the decision in the *General Electric* case sanctioned patent licensing arrangements whereunder all sales of the patented product were to be made to consumers only and not to jobbers or dealers. And USG was under no duty, if it did make or permit sales to manufacturing distributors, to set a licensee price which would assure the distributors a profitable margin for resales; it could set such price as it chose.

The Government's contention that USG exercised illegal control over the resale prices of manufacturing distributors on board and lath cannot be sustained. There is no evidence of contractual or coercive control. Reselling by the
8850 manufacturing distributors at or about the dealer price was but the normal economic consequence of limitation of the discount to an approximate cost of handling margin. This limitation was lawful; the normal economic result cannot be unlawful.

It is concluded that there is no substantial evidence that the defendants either by use of the consent clause, by supplying the manufacturing distributors with information as to dealer prices on board, by policing manufacturing distributors' sales, by limiting the discount to approximately the cost of handling, or in any manner, fixed the prices at which manufacturing distributors resold gypsum board.

It is therefore concluded, in respect of the whole of the second issue of fact, that the evidence fails to establish that the operations of the defendants were carried beyond the proper limits of the patent monopoly and licensing thereunder, *i.e.*, beyond the activities contemplated by the agreements as written and into the field denounced by the Sherman Act.

VII

Significance of the Evidence, Assuming the Declarations Connected; the Asserted Plan to Blanket the Industry Under Patent Licenses

Significance of the evidence, assuming the declarations connected: In topics V and VI of this opinion we have been at pains, in examining the evidence which the Government appears to reply upon as proving the combination and conspiracy charged in the complaint, to consider as binding only upon the declarant the declarations which were received in evidence subject to connection. This was our duty, the limitations upon the declarations rule having been invoked by the defendants and the Government having failed, as shown in topic IV, to prove by evidence outside the declarations the existence of the conspiracy charged. But in view of the importance of this case and the consequent probability that it will reach a higher tribunal, we think it desirable also to state our views as to the meaning of the evidence when the declarations are considered as binding not merely upon the declarant but also upon all of the alleged co-conspirators. We have considered the evidence in this light, and we think the Government still has not proved that the license agreements were executed not as bona fide license agreements reasonably designed to secure to USG the pecuniary rewards of its patent monopoly but only as sham agreements to give color of legality to the illegal purposes alleged in the complaint, and has not proved that the operations of the defendants were carried beyond the proper limits of the USG patent monopoly, and therefore has not proved the combination and conspiracy charged. The evidence discussed in topics V and VI
8851 no more proves lack of bona fides in the execution
½ of the license agreements, or operations beyond the limits of the patent monopoly, when the declarations are regarded as binding upon all of the alleged co-conspirators, than it does when such declarations are considered as binding only upon the declarant. This is necessarily so—in the view we take of the significance of the declarations. Since, as demonstrated in topics V and VI, they fail to convict the declarants themselves of lack of bona fides in the execution of the licenses, or of operations beyond the proper limits of the USG patent monopoly, they cannot convict others thereof.

There is, however, in the record additional evidence, including declarations, not heretofore alluded to because ag-

gregated and relied upon by the Government as relevant to a special contention to be discussed below. This evidence consists in the large of intra and inter-company correspondence relating to the terms upon which USG was offering to settle litigation and extend licenses, and the advantages and disadvantages of taking licenses; included is testimony explanatory of this correspondence. The following items sufficiently illustrate the character of this evidence:[55]

(a) Exhibit 185, a memorandum sent by Blagden of Beaver to Avery of USG in December, 1925. This suggests, as an alternative to possible reversal of the USG-Bestwall-Beaver decision of July 21, 1925, a settlement and license enabling USG to maintain "a lawful price control" through the "legitimate means of patent licenses," Blagden to endeavor to induce other manufacturers to accept licenses and permit USG to take a "dominating position."

(b) Testimony by Blagden that, after the Beaver-USG license was signed in July, 1926, in conversations from time to time with some of the other members of the industry, upon their inquiring about the Beaver license, he advised them to "join up."

(c) Exhibit 189, a letter of October 1, 1926, from Blagden to Avery in which Blagden said that "the 'entente cordial' that has started between our companies is only a beginner and * * * if we play the game right, it should bring about big things."

(d) Testimony of Blagden that he advised George M. Brown of Certain-teed that he could not afford to make board without the superior folded edge and advised him to take a license for his own best interests and get "with the others" the benefit of price stabilization, *i.e.*, "the benefit of the license price, which would be the same price" to all.

(e) Exhibit 123, a letter of October 15, 1926, in which Griswold of American wrote Avery that a committee from American expected "to meet with all other Manufacturers of board who have not yet signed the License Agreement. * * * with the object in view of getting united action * * *."

(f) Exhibit 124, a letter of October 19, 1926, in which Avery replied expressing appreciation for Griswold's in-

55 This evidence is discussed on pages 9 to 46 in the Government's Memorandum filed May 5, 1944, in opposition to the motions now under consideration.

terest and for the "broad-visioned manner with which you [Griswold] have proceeded with this important subject" and said that he would be interested in hearing from Griswold after the meeting.

(g) Exhibit 132, a letter of January 3, 1927, in which Griswold wrote Avery that he had started out "to deliver 100 per cent of the manufacturers of board that would be willing to sign up on a license agreement with your company * * *."

8852 (h) Exhibit 136b, a letter of March 24, 1927, from Griswold to Williams of National in which Griswold reported that Texas had recently decided to take a USG license and since that decision had "reached the decision to join in our proposition so they will become one of the group which we are merging," and that Atlantic signed and that if Certain-teed which was considering it "comes in" and National, that "will make it 100% with all manufacturers who will be operating under the license agreement and will do away with the legal complications which have existed in the past and which are so unpleasant as well as expensive."

(i) Exhibit 104, a letter of May 12, 1926, by Griswold to McCrady of American stating that Blagden had had interviews with Avery in respect of settlement of disputes and litigation between the wallboard manufacturers by a licensing arrangement and that (according to Griswold) the outlook is favorable and "According to the plans we have we figure that there is a possibility of us holding the price steady on wall board for the next fourteen or fifteen years which means much to the industry."

(j) Testimony of Holland of Universal that he suggested to Griswold in September, 1928, that American ought to take a USG license like Universal's—so that the industry might make the better board since the open-edge board was giving wallboard generally "a black eye."

(k) Exhibit 204, a letter of January 7, 1929, in which Holland wrote Haggerty of National that an effort should be made to hold another meeting of those interested in the board situation; that American cannot hope to gain by delaying the settlement because this will demoralize prices throughout 1929.

(l) Exhibit 206, a letter of January 12, 1929, wherein Holland tells Haggerty that he thinks that the matter of future prices after the Utzman patent ran out was not keeping American out because Avery had other patents, and that "it is my opinion that if you and the others interested in the settlement of the wallboard controversy bring enough pressure to bear on the American crowd * * * something can be done."

(m) Testimony of Holland that he "kept trying to talk these people [other manufacturers] into taking out a [closed-edge] license."

(n) Testimony of Griswold that in a conversation in April, 1928, with George M. Brown, Griswold discussed with him the advisability of Certain-teed's taking a license and making closed-edge instead of open-edge board which was then selling at a rather low price, and that Brown said that if all the other manufacturers took out a license, or certain of them, he might consider it, but that he felt that Certain-teed's competitors, especially Ebsary, since it was a "pretty hot" competitor of Certain-teed's "in that territory," should also be licensed.

(o) The fact that Texas signed its 1927 license after Griswold in Exhibit 157, a letter of April 9, 1927, receipt of which Gloyd of Texas acknowledged in Exhibit 158 (dated April 11), advised that Certain-teed was willing to take a license and that Avery, who had been opposed, had yielded to the persuasion of Blagden and himself and would consider Certain-teed's application, and that National would file application and that with American that "will make the matter one hundred percent."

(p) Exhibit 198, minutes of a May 14, 1929, directors' meeting of National reciting a statement by the chairman that he had been "informed that all other manufacturers of gypsum products * * * except * * * American * * * had agreed to sign the license contract in substantially the form as submitted to this Board," and setting forth a resolution authorizing the proper officers to execute a license agreement with USG in the form submitted.

(q) Exhibit 716, a telegram of May 17, 1929, from Baker of National to Avery in which Baker advised that National was "working with Ebsary with hope of everybody being set by Saturday to justify your calling meeting all board

makers Monday if you like," and that Reeb of Niagara was ready.

(r) Exhibit 205, a letter of January 9, 1929, in which Haggerty wrote Holland that it was a question in his mind "whether or not the other four board makers, who are outside the license agreement, feel that it would be advantageous to go in without the American Gypsum Company," and that "the chief value in a meeting would be to discuss that point," and that "If this price control feature was discontinued in August, as is the case in the present form of the agreement, how could we expect the cooperation of the United States Gypsum Company in anything bearing upon a discussion of price"; that USG's position would then "be exactly what it is now, and rightly so," *i.e.*, unwillingness to discuss price before a license agreement with the price control feature is signed.

8853 (s) The admission in Ebsary's answer that "prior to May, 1929 Ebsary had conferred with others concerning the contemplated license" and that in May, 1929, prior to the meeting of the 22nd, "there was a meeting or conference between these defendants and U. S. G. and others, at which there was discussed the granting by U. S. G. to the defendant Ebsary and others of a license * * *."

(t) Testimony of Lenci that he went to Chicago for the May, 1929, meeting pursuant to a previous arrangement.

(u) The fact that Channing attended the May, 1929, meeting in Chicago, notwithstanding that Atlantic was already a licensee, having executed its license in March, 1927.

This evidence, even when silhouetted, *i.e.*, looked at out of context with the other evidence in the record which has been reviewed in topics IV, V and VI, and considering the declarations as binding upon all, does not prove the conspiracy charged for there is nothing in it, as inspection of the foregoing illustrative items will show, indicating that the licenses which USG was willing to grant were to be, or that when executed they were, sham licenses signed to give color of legality to illegal purposes, or that the operations of the defendants were carried beyond the proper limits of the USG patent monopoly. Indeed, Exhibit 185 (item (a)), especially emphasized by the Government, refers to "a lawful price control" but USG through the "legitimate means of patent licenses"; and the very openness of the intra and

inter-company discussions and suggestions with respect to the advantages and disadvantages of taking USG licenses bespeaks good faith in the execution of the licenses. There is nothing at all in this evidence to indicate that there was to be improper standardization, price fixing upon unpatented materials, improper restriction upon distribution of gypsum products through jobbers, or control of resale prices of manufacturing distributors. The references to price stabilization are no evidence of illegal purpose in the absence of a showing of lack of good faith in the execution of the license agreements, for under the *Bement* and *General Electric* cases price control by a patent owner is lawful; hence it could not be unlawful for USG as patent owner or the (prospective) licensees to desire and anticipate its results.

If the evidence above referred to does not, when looked at by itself, prove the elements of lack of bona fides in the license agreements and intent to accomplish objectives beyond the proper limits of the USG patent monopoly necessary to establish the conspiracy charged, *a fortiori* it does not do so when looked at in context with the other evidence in the case, even though the declarations in this and the other evidence are considered, in disregard of the limitations upon the declarations rule, as binding upon all of the alleged co-conspirators.[56]

8854 *The asserted plan to blanket the industry under patent licenses*: What the Government especially contends that this additional evidence proves is that the defendants "have * * * associated themselves together in a common plan or enterprise to blanket the gypsum industry under * * * license agreements" and "stabilize prices." But assuming, *arguendo*, that this evidence does show a common plan under which the defendants and their predecessors in the "Eastern area" were to take patent licenses from USG with price restrictions and consequent price stabilization,

56 It is, indeed, doubtful that the Government even contends that this additional evidence proves lack of bona fides in the licenses or operations beyond the proper limits of the patent monopoly. Throughout the introduction of evidence and the oral argument, in which emphasis was placed by the Government on the charge of lack of bona fides in the licenses, they were variously referred to as "sham," "subterfuge," "coverup," "not bona fide." In the Government's briefs filed in opposition to the present motions there is little on this subject or in these terms, and in that part of the memorandum which aggregates the additional evidence now under discussion (pages 9 to 46 of the Government's Memorandum of May 5, 1944) there is nothing; and nothing concerning operations beyond the proper limits of the patent monopoly.

this, in the absence of sham licenses and an intent to accomplish objectives beyond the proper limits of the patent monopoly, would not be illegal. It is not unlawful to agree to do what is not unlawful when done. It has been demonstrated in topic II that the parties to a patent license agreement containing a price control provision have in the negotiation and execution of the same "conspired" and "combined" to restrain trade actually, but not unlawfully because the patent laws permit this so long as the license is bona fide and not intended to accomplish objectives beyond the proper limits of the patent monopoly. Under such a license there is actual restraint of trade, but no illegal restraint. If two such licenses (a plurality of licenses) were severally executed, each bona fide and without objectives beyond the proper limits of the patent monopoly, the totality thereunder of actual restraint of trade in the patented product would be the sum of the actual restraints under each, and the totality of illegal restraint none. And if in the case of two such licenses (a plurality), the two (prospective) licensees and the patent owner were in advance to agree with each other (associate themselves together in a common plan that the two licenses should be executed, and if they were executed, still the totality of actual restraint under such licenses would be no more than if they had been executed without prearrangement; and the totality of illegal restraint would, again, be none—for each license when executed would in itself be lawful. Into howsoever large a plurality this be carried, the result is the same, *i.e.*, the totality of actual restraint of trade in the patent product is the sum of the actual restraints under each of the license agreements, and no more; and the totality of illegal restraint is none. If A, B, C, D, E and F agree in advance with each other and with P, a patent owner, that each shall sign a bona fide patent license to be granted by P, with control of the price of the patented product in P, the only additional restraint, as compared with the totality of restraint
8855 if the same licenses were executed severally, *i.e.*, without prior agreement, would be the disablement of A, B, C, D, E and F, in view of their contract to take licenses from P, to take them from X, *i.e.*, some other patent owner. But the instant case does not, under the complaint, concern itself with interstate trade in patent licenses; it has to do only with interstate trade in gypsum products.

In short, the contention of the Government that the additional evidence referred to in this topic VII proves that

the defendants associated themselves together in a common plan "to blanket" the gypsum industry under patent licenses and stabilize prices, and that this is unlawful, fails for want of support in law in view of the *Bement* and *General Electric* cases, even if proved in fact—unless the licenses were to be sham and the objectives under them beyond the proper limits of the USG patent monopoly. Given a right under the patent law to grant a plurality of bona fide licenses with price control provisions but no objectives beyond the proper limits of a patent monopoly, it can make no difference in either totality of actual restraint, or in law, whether the several licenses are executed with, or without, prearrangement between the patentee and the prospective licensees as a group. The vice in the Government's contention in this respect is that it assumes that agreement or action in concert by competitors in industry is under all circumstances inherently and necessarily unlawful, when the fact is that it is not unlawful unless it has an unlawful end or contemplates unlawful means.[57]

We have assumed above, *arguendo*, that there is proof of the contention that the defendants associated in a common plan "to blanket" the gypsum industry under patent licenses and stabilize prices. But though it may be said that the evidence especially aggregated by the Government in proof of this contention tends to support it if looked at alone, it cannot be looked at alone. As said in topic III under the sub-topic "Principles of Proof," an inference to be reasonable must be warranted from all the evidence, otherwise a fact reasonably inferable from a single fact, or group of facts, might be inconsistent with the totality of proven or conceded subsidiary facts. *National Labor Relations Board* v. *Union Pacific Stages*, 99 F. (2d) 153, 177 (C. C. A. 9th, 1938). "Testimony is the raw material out of which we construct truth and, unless all of it is weighed in its totality, errors will result and great injustices be wrought." *National Labor Relations Board* v. *Thompson Products*, 97 F. (2d) 13, 15 (C. C. A. 6th, 1938).

When the evidence referred to above in this topic VII is considered in connection with other related items, it fails to prove that the defendants associated in a plan to blanket the industry under the patent licenses and stabilize prices:

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57 It is common knowledge that there are numerous national trade associations which agree upon and carry out plans for industry betterment without coming within the condemnation of the Sherman Act.

8856 The Government especially emphasizes Exhibit 185, the memorandum sent by Blagden of Beaver to Avery of USG in December, 1925, suggesting a settlement and license enabling USG to maintain a lawful price control and to take a dominating position in the industry (item (a) set forth above in this topic). Segregating this memorandum from other evidence to which reference is made below, the Government couples it with the facts that after several meetings between Avery and Blagden in June and July, 1926, the Beaver-USG license agreement was signed (on July 29); that Blagden testified that he talked with other members of the industry on the subject of a license and advised them to "join up" (item (b)), and specifically with George M. Brown whom he advised to take a license and get the benefit with the others of price stabilization, *i.e.*, of the license price which would be the same price to all (item (d)); that Blagden referred in correspondence with Avery to the " 'entente cordial' that has started between our companies," Exhibit 189 (item (c)); that Avery, according to a statement by Griswold, had yielded to the persuasion of Blagden and himself and would consider Certain-teed's application for a license (item (o)); and that ultimately the various other companies took licenses. And the Government urges that from this an inference should be drawn that there was an agreement between Beaver and USG that an industry wide license system would be promoted. But when such evidence is looked at in context with other related evidence, including uncontradicted and unimpeached testimony, the inference which the Government draws is seen not to be justified. In the first place the evidence shows that the right to the use of USG's patents covering the closed-edge gypsum board, a superior product cheaper to make and demanded by the trade, was needed by the other manufacturers. This is made to appear in greater detail in topic V of this opinion. The decision in the USG infringement suits against Bestwall and Beaver had, however, made it impossible for competitors of USG to manufacture the closed-edge board without infringing USG's patent rights. The trial court decision in USG's favor in the second suit was rendered on July 21, 1925. Recognizing the difficulty of Beaver's position and the approach of the time when a final judgment for large damages might be entered (the ultimate settlement with Beaver involved a $250,000 damage payment), Blagden made overtures to Avery to settle the litigation and at a meeting between them in December,

1925, Avery specified the terms upon which USG would settle as described in the statement of facts at the outset of this opinion. At the time of this discussion and offer of settlement on the basis later adopted for the USG-Beaver settlement Blagden did not have with him the memorandum, Exhibit 185—it had been in course of preparation by Blagden's lawyer; and there is no evidence that the subject matter in it was ever discussed by Blagden or Avery
8857 or that the memorandum was ever seen or its contents discussed by any other persons in the industry. Blagden testified that he did not discuss with Avery the matter of all companies' settling disputes and taking licenses. The evidence shows that Beaver settled its lawsuit and took a license without regard to the other companies. Blagden so testified, and he testified also that he had nothing to do with the taking of licenses by Universal in September, 1926, Atlantic in March, 1927, and Texas in April, 1927—and these were the only licenses which were executed while Blagden remained in the gypsum business; indeed, until after Certain-teed had taken over the Beaver company on January 20, 1928, and repudiated the USG-Beaver settlement and license. He testified that he left this business in 1928. In this early period USG had patent infringement suits against other gypsum board manufacturers—as appears in the statement of facts at the outside of this opinion—suits similar to that which had been prosecuted against Bestwall and Beaver. Except for USG, Beaver was the largest gypsum board manufacturer in the industry at the time and therefore the other companies were naturally interested in what Beaver was going to do about a settlement and license and what terms it would be able to get from USG. As Blagden put it, his company was regarded as the "guinea pig" of the industry. When other companies inquired about the USG-Beaver settlement and license, Blagden as a matter of course answered the inquiries and, since he disliked litigation and regarded the Beaver license as an advantageous contract because it permitted the manufacturer to supply the demand of the trade with a superior product at less cost, he usually recommended that the other companies settle and take a license. All this appears from his testimony. And it is in this context that he said that he suggested that the other companies "join up," and in the same context that he advised George M. Brown to take a license and get with the others the benefit of price stabilization.

In respect of Exhibit 189 (item (c)) and the "entente cordial," Blagden testified that he meant that the "bickering and squabbling and fighting" which had been going on between Beaver and USG was over upon the signing of the license agreement, and that the two companies were again friendly; that the phrase "entente cordial" was merely his expression in respect of the better feeling that probably would result from the settlement and license; and that by "if we play the game right" he meant only living up to the license agreement and obeying the published prices of USG and that in this respect he was referring only to Beaver's agreement with USG.

The Government stresses Griswold's letter to Avery of October 15, 1926, Exhibit 123 (item (e)), referring to a committee from American which expected "to meet with all other Manufacturers of board who have not yet signed
8858 the License Agreement: * * * with the object in view of getting united action," and Avery's reply stating that he would be interested in hearing from Griswold after the meeting, Exhibit 124 (item (f)), and the letter of January 3, 1927, in which Griswold wrote Avery that he had started out "to deliver 100 per cent of the manufacturers of board that would be willing to sign up on a license agreement with your company," Exhibit 132 (item (g)), and the letter of March 24, 1927, from Griswold to Williams of National referring to Texas' "decision to join in our proposition so they will become one of the group which we are merging" and that with Atlantic which had signed and Certain-teed which was considering coming in and National that "will make it 100% with all manufacturers who will be operating under the license agreement," Exhibit 136b (item (h)), and Griswold's statement in a letter of April 9, 1927, to Gloyd advising that National would file application and that with American and Certain-teed whose application would be considered by Avery, that "will make the matter one hundred percent," Exhibit 157 (item (o)). But again when these items of evidence are looked at in the context of other related items it is seen that they do not prove that the defendants associated themselves together in a plan to blanket the industry under licenses. In the first place the correspondence between Griswold and Avery in the fall of 1926 and the early part of 1927 indicates that, while Griswold discussed the matter of a license agreement with various gypsum board manufacturers, some of the companies, including Griswold's own company, American, told him

that they were not satisfied with the license offered and that USG refused to make any concessions from the terms of the settlement and license which had been given to Beaver and Universal. This especially appears from Exhibits 123 through 135 and Exhibit 191. Avery made clear that he would not change the terms which he had announced at the time of the Beaver settlement and license. As he said in Exhibit 134, a letter of February 2, 1927, to Griswold, "I can hold out no encouragement to you for any change in our position." Thus there was no unanimity. Next it is made clear by Griswold's testimony that he was not an agent of emissary of Avery's. His statements to this effect were categorical and convincing. They have been referred to in topic V of this opinion. Griswold testified that he had nothing to do with the taking of the Universal and Texas licenses and nothing to do with the taking of Atlantic's license except to answer Atlantic's questions with respect to the process of manufacture of wallboard, advising that if Atlantic was going into the board business it was best to make the closed-edge board, if Atlantic could reach an agreement with Avery, and sending Atlantic a copy of the USG license. Still further, it is to be noted that the Government's emphasis of the items just mentioned leaves out of account Griswold's interest in a merger. Throughout the period of time covered by these items Griswold was working on a merger of American and most if not all of
8859 the other manufacturers except USG, the merged company to take a license, and the evidence convincingly indicates that at all times the thing which was uppermost in Griswold's mind was the success of this merger. He makes continual reference to the subject throughout his correspondence, including Exhibit 157 and Exhibit 136b above referred to. The evidence fails to show that either Avery or USG had anything to do with the origination of this venture. It was Griswold's enterprise. But Griswold knew that his plan for a merger could not be consummated with outstanding infringement suits and the existence of a very real possibility of judgments for infringement damages against some or all of the proposed constituent companies. Griswold's testimony shows that he had a firm conviction that a gypsum board manufacturer must make a closed-edge board in order satisfactorily to continue in business. This made it imperative that he remain in a position to obtain a license for his merged company. His testimony also indicates that he believed that the litigation

and bad feeling throughout the industry would bring about increasing bitterness and turmoil and eventually result in price wars and chaotic conditions generally. It is fairly inferable also from his testimony and the circumstances that he was not without hope that he might get special concessions in connection with USG's damage claims against his own company by giving Avery the impression that he was promoting USG's interests. The amount Avery first had in mind, according to the evidence, for infringement damages to be paid by Beaver, was a million dollars. Especially in respect of Exhibit 136b, Griswold testified that when he wrote it he had talked to Williams as to the possibility of National's becoming part of his contemplated merger. Therefore what he meant by "our position" and "make it 100%" in this letter, and by the phrase "deliver 100 per cent" in Exhibit 132, and by "united action" in Exhibit 123, was the getting of all of the companies other than USG into his proposed merger. Obviously Griswold recognized that this would settle the unpleasant and expensive litigation, or, as he put it in Exhibit 136b, do away "with the legal complications which have existed in the past and which are so unpleasant as well as expensive."

As evidencing a plan to blanket the industry under licenses the Government refers to the testimony of Holland that he suggested to Griswold in 1928 that American ought to take a USG license like Universal's (item (j)), to the letter of January 7, 1929, in which Holland suggested to Haggerty of National that an effort should be made to hold another meeting of those interested in the board situation and that American could not hope to gain by delaying the settlement, Exhibit 204 (item (k)), to Haggerty's reply indicating that in his view the chief value in a meeting would be to discuss whether or not the other four board
makers who were outside the license agreement would
8860 think it advantageous to go in without American, Exhibit 205 (item (r)), to Holland's letter of January 12, 1929, telling Haggerty if he and the others interested in the settlement of the wallboard controversy "bring enough pressure to bear on the American crowd" something can be done, Exhibit 206 (item (l)), and to Holland's testimony that he "kept trying to talk these people [other manufacturers] into taking a license" (item (m)). But these items of evidence when looked at in connection with other related evidence in the case are seen not to indicate such a plan, but to involve Holland's interest in accomplishing a merger

of his own. Holland became president of Universal early in 1928. The evidence shows that he regarded closed-edge board as a product much superior to the open-edge variety. He was struggling to keep Universal out of receivership and he recognized that the future of the company was endangered by the chaotic conditions in the industry, which he attributed primarily to the litigation and dissension. His testimony shows that he sought to save Universal from bankruptcy through an attempted merger of various of the smaller manufacturers, and that the merger proposal had been promoted by New York underwriters. Holland's testimony shows that his interest in this merger was solely on account of his own company. It appears also that he sought to clear up the litigation in the industry, and that, thinking that the closed-edge board was a better product, he would have liked to have all the companies making that variety of board rather than the open-edge which was giving wallboard generally "a black eye"—in Holland's language; that is to say, he was interested in promoting better conditions so far as marketability of gypsum board was concerned in order to help his company as well as the other manufacturers out of their unfortunate financial situation due to the litigation and the price war. In view of Holland's interest in a merger and in improvement of the condition of his own company, his comments in Exhibit 204 in respect of the desirability of holding another meeting and American's delaying the settlement, and in Exhibit 206 concerning bringing pressure to bear upon American, are understandable and it is clear that they have no reference to an alleged USG plan to blanket the industry under patent licenses. Holland testified that he was at no time a representative of USG and that he never had an understanding or agreement with USG or with anyone in that company that he would promote any plan looking toward the licensing of all of the industry under price fixing agreements. Indeed, it appears that he found Avery on several occasions when he talked with him in 1928 and 1929 somewhat disinclined to discuss the matter of settlement and license—"a very hard man to reach, he rather ignored me most of the time in my efforts to bring about a discussion." Holland stated further, categorically, that whatever he did during this period 1928-1929 in connection with license agreements he did on behalf of the Universal company or himself and no one else, except possibly in respect of his proposed merger in which of course other companies would be involved.

8861 As evidencing a common plan or enterprise to blanket the industry under licenses and stabilize prices, the Government refers to the letter of May 12, 1926, written by Griswold of American to McCrady of the same company stating that Blagden had had interviews with Avery in respect of settlement of disputes and litigation between the wallboard manufacturers by a licensing arrangement and that "According to the plans we have we figure that there is a possibility of us holding the price steady on wall board for the next fourteen or fifteen years," Exhibit 104 (item (i)). But Griswold testified that when he wrote that letter he assumed that USG would fix prices under the Birdsey patent which had issued in 1920 and had therefore, out of twenty years to run (Griswold's understanding of the life of a patent), fourteen years remaining, and Griswold said that he figured that if "the different parties" took out a license agreement with USG and the law gave USG the right to establish the price at which a licensee could sell the product, the price of wallboard would remain fairly stationary unless disturbed by competition of other products. But he testified further that he did not mean by the statement in the letter to McCrady that he had any understanding with Avery or anyone else that price control would be extended under some patent after the expiration of the Utzman patent; that he never had any discussion with Avery or anyone else about Avery's finding some patent other than the Utzman patent to give a longer price control, his understanding being that the price control would end at the expiration of the patent. Griswold testified also that the reference in this letter to holding the price steady was his own statement, not Blagden's. Blagden testified that he did not discuss with Avery the matter of all companies' settling disputes by taking licenses, and that he did not have a plan for holding the price steady for fourteen or fifteen years.

The testimony of Griswold to the effect that George M. Brown of Certain-teed had said that if all the other manufacturers, or certain of them, took out a license he might consider it but that he felt that Certain-teed's competitors, especially Ebsary, should also be licensed (item (n)), is apparently relied upon by the Government as evidencing an insistence on the part of Certain-teed that all in the industry must be licensed. But Certain-teed's license when executed was not conditioned, under the evidence, upon any other manufacturer's taking a license. Moreover, Gris-

wold testified that at no time did National, Certain-teed, Ebsary and Niagara agree with one another that they would take out a license. Whittemore of Certain-teed testified, as has been pointed out in topic V of this opinion, that the decision which he and George M. Brown and the management of Certain-teed made to settle with USG and take a license had nothing to do with any other company in the business, and that Certain-teed took the license
8862 because it desired to manufacture the Utzman closed-edge board and also to get rid of the possibility of future litigation. George M. Brown testified in respect of taking the May 1929 license that Certain-teed "had determined * * * to go ahead with it without regard to what other companies did about it." Indeed, Brown testified that "we didn't care what others did, and we would have preferred, if we could have had the say about it, that some of them shouldn't have the right to make it, because we didn't think they would respect the obligations that we had to respect." Brown thought that some of Certain-teed's competitors "if they took licenses, would not respect the price which United States Gypsum fixed" and that that "would be annoying."

The recital in the minutes of the May 14, 1929, directors' meeting of National of the chairman's statement that he had been "informed that all other manufacturers of gypsum products * * * except * * * American had agreed to sign the license contract in substantially the form submitted to this Board," and the resolution authorizing execution of a license agreement with USG in the form submitted, Exhibit 198 (item (p)), are equivocal. It is without dispute that the various companies were at about this time considering the May 1929 licenses. It is no more inferable from these minutes that the various (prospective) licensees had agreed with each other to sign the license contract with USG than it is that they had agreed severally with USG to do so. Moreover the chairman's statement recited in the minutes is mere narrative.

The Government urges that the telegram of May 17, 1929, in which Baker of National advised Avery that National was "working with Ebsary with hope of everybody being set by Saturday to justify your calling meeting all board makers Monday if you like," and that Reeb of Niagara was ready, Exhibit 716 (item (q)), and the admission in Ebsary's answer that prior to the Chicago meeting of May 22, 1929, Ebsary had conferred with others concerning the

contemplated license and that Ebsary and USG and others had met and discussed the granting by USG of a license (item (s)), and the testimony of Lenci that he went to the May, 1929, meeting in Chicago pursuant to a previous arrangement (item (t)); and the fact that Channing attended the Chicago meeting notwithstanding the fact that Atlantic was already a licensee (item (u))—all tend to evidence that the Chicago meeting was prearranged. It seems not to be disputed by the defendants that this meeting was prearranged. But this is not necessarily evidence of an association of National, Certain-teed, Ebsary and Niagara in a common plan or enterprise to blanket the entire gypsum industry with licenses and stabilize prices. Under the evidence every company in the industry was interested in settlement or avoidance of litigation and in securing a right to make the closed-edge board, and each company
8863 which contemplated taking a license was interested, in view of the "most favored nation" clause in the contracts already executed, *i.e.*, the 1926-1927 contracts, to see that the others got no better terms. This may well account for the attendance of Channing at the May, 1929, meeting. Moreover, each of the companies contemplating taking licenses would naturally be interested in attending the meeting in order to know whether the others were going to settle with USG. But Lenci testified that there was no general understanding at the Chicago meeting, and that so far as he knew the other (prospective) licensees each determined to take a license before going to Chicago. He testified also that Ebsary's conclusion to take a license was reached independently, without regard to what other companies would or would not do. Whittemore testified that notwithstanding the fact that representatives of other companies were in attendance at the May, 1929, meeting, Certain-teed made its agreement with USG independently, that the Certain-teed negotiations were conducted with USG individually, and that there was no agreement or understanding or concerted action of any kind among the manufacturers.

VIII

Authorities Relied upon by the Government

The Government especially relies in the substantive aspects of the case upon *United States* v. *Masonite Corp.*, 316 U. S. 265 (1942), *rehearing denied*, 316 U. S. 713 (1942);

Interstate Circuit v. *United States*, 306 U. S. 208 (1939); *Standard Sanitary Mfg. Co.* v. *United States*, 226 U. S. 20 (1912); and *American Equipment Co.* v. *Tuthill*, 69 F. (2d) 406 (C. C. A. 7th, 1934). These cases have been briefly mentioned in various contexts in previous topics of this opinion, but will now be discussed at greater length.

In the *American Equipment* case the American Equipment Company, owner of a patent upon a mechanical brick handler used to move small quantities of brick from car to kiln and kiln to car but which did not affect the shape, size, quality or color of the brick, an unpatented product, granted a license for its use to brick manufacturers who made 90% of the brick used in the Chicago area. The patent owner assigned each licensee a production quota and instituted a royalty of a given price per thousand of brick made and delivered from the licensee's yard; but if the quota was either exceeded or not reached a substantial penalty royalty upon the amount of the deviation was added. Prior to the establishment of this license and quota system the price of brick in the Chicago area had varied from $3.75 to $10 per thousand; thereafter it was stabilized, remaining for one ten year period at $12, notwithstanding wide and continual fluctuation in the price of brick materials. During a period of twenty-one years the various licensees complied
8864 with the quota or paid the penalty for deviation. But during the succeeding two year period one licensee (Tuthill Building Material Company), although it sold brick much in excess of its quota, paid only the quota royalty, and the patent owner brought an accounting suit for the penalty royalty due upon the brick which exceeded the quota. Recovery was denied upon the ground that the parties to the licenses had, by means of the rigid limitation upon output, fixed prices upon an unpatented product and that such price fixing, not the use of the brick handling machine, was the dominant purpose of the license agreements. The Circuit Court of Appeals approved the doctrine of the *General Electric* case but held it not applicable.

The distinction between the *American Equipment* case on the one hand and the *General Electric* case and the instant case on the other is obvious. The *General Electric* case warrants price control by the owner of a product patent in order that he may secure the pecuniary reward of his patent monopoly. There is a normal relation between that reward and restriction upon the licensee's selling price, for unless that price can be controlled by the patent owner the latter's

profit in making and selling the patented product may be destroyed. In the *American Equipment* case the patent was upon a machine, not a product, and the price was fixed, through the limitation of output, upon the brick, an unpatented product; and this was the dominant purpose of the licensing arrangements. In view of the limitation upon output there was no normal relation between the control of the price of brick and the securing of the reward of the machine patent monopoly; the patent licenses were, therefore, in a broad sense, subterfuge. In the instant case the patents upon which the licenses were principally founded are product patents; USG, the patent owner, was itself a manufacturer and seller of the patented product, and the price control was upon the sale price of that product when also made and sold by the licensees. The purpose of USG in granting the licenses was to settle infringement litigation, collect infringement damages, secure royalties, and protect its own profit in the manufacture and sale of the patented product; the purpose of the licensees in accepting licenses was to settle or avoid litigation and obtain the right to make the superior product demanded by the trade. These purposes were legitimate. If the licensees, or some of them, also anticipated and desired the benefit of a stabilized price, that was not wrongful because a stabilized price would be the normal economic consequence of the exercise of USG's right as patent owner to protect its own profit by price control.

In respect of the *Masonite, Interstate Circuit* and *Standard Sanitary* cases: None of these cases purports to overrule the *Bement* or *General Electric* cases (the *Standard Sanitary* case was decided after the *Bement* case but before the *General Electric* decision). Hence, unless the instant case on the one hand and the *Bement* and *General Electric* cases on the other are distinguishable—and it is
8865 demonstrated in topic II of this opinion that they are not—these three cases, *Masonite, Interstate Circuit* and *Standard Sanitary*, cannot require a result in the instant case different from that which we reach. And each of the three cases is distinguishable on its facts from the instant case and the *Bement* and *General Electric* cases.

The *Standard Sanitary* case: in that case one Wayman, a defendant, but not himself a manufacturer, on condition of the elimination of unpatented hard enameled "seconds," secured from Standard Sanitary and other manufacturers options upon process patents for enameling iron sanitary

utensils. A committee of six, including Wayman and five manufacturers' representatives, worked out, to be incorporated in license contracts, a plan for manufacturers' prices and jobbers' and dealers' resale prices. Under the plan the manufacturers were not to sell jobbers who did not also take a license and submit to a price schedule. Royalties were a given sum per day for furnace use, but 80% was returnable as "cash bail" if a licensee abided by all of the provisions of its license. Having obtained approval of this plan by a sufficient number in the industry, Wayman exercised his options, became the owner of the patents, and issued the licenses as planned. Eighty-five percent of the manufacturers and ninety percent of the jobbers were parties to the arrangements. In answer to a charge that these arrangements were in violation of the Sherman Act, it was sought to justify them under the *Bement* case and upon the ground that an undue number of the (unpatented) seconds were being produced, with consequent harm to the reputation of the superior patented product and to the consumer—since the seconds were "palmed off" as not defective. The seconds were said to be "discrediting the ware and demoralizing the market and business." The Court held that the licensing arrangements were illegal. Quoting from the *Bement* case, it recognized that the Sherman Act "'clearly does not refer to that kind of a restraint of interstate commerce which may arise from reasonable and legal conditions imposed upon the assignee or licensee of a patent by the owner thereof, restricting the terms upon which the article may be used and the price to be demanded therefor. Such a construction of the act we have no doubt was never contemplated by its framers.'" (226 U. S. at 40) But the Court held that the Wayman license agreements "transcended what was necessary to protect the use of the patent or the monopoly which the law conferred upon it. They passed to the purpose and accomplished a restraint of trade condemned by the Sherman law. * * *" (226 U. S. at 48)

The case is distinguishable from the *Bement*, *General Electric* and instant cases. The price control in the *Standard Sanitary* case did not bear a normal relation to protection, or even to exploitation, of the patent monopoly
8866 in Wayman, for the prices were not fixed by him but by a committee of manufacturers' representatives of which he (not a manufacturer) was but one of six, and the royalties were to be 80% rebated if the license terms were complied with. Therefore, as in the *American Equipment* case, the licenses were, broadly, subterfuge. In the *Bement*,

General Electric and instant cases the price control was normally adapted to the protection of the patent rights of the several licensors since they were themselves manufacturers and sellers of the patented product. Moreover, in the *Standard Sanitary* case the license arrangements extended to the unpatented seconds and to the resale prices of jobbers and dealers on the patented product. As we have demonstrated in topic VI, there was no control of unpatented materials or of resale prices in the instant case; and there was none in the *Bement* or *General Electric* cases.

The *Interstate Circuit* case: The trial court in that case found that distributors of copyrighted moving picture films had entered into a contract with each other and with, and at the instance of, exhibitors who operated first run theatres —and who dominated the motion picture business in the territory where their theatres were located—providing that the distributors' licenses granted second run theatres in the same territory should restrict the licensees from exhibiting at a lower admission price than 25¢ and from running double features. The Supreme Court held this finding supported by evidence and the contract a violation of the Sherman Act. The decision was reached in part upon the holding in *Straus* v. *American Publishers' Ass'n*, 231 U. S. 222 (1913), and *Paramount Famous Lasky Corp.* v. *United States*, 282 U. S. 30 (1930), that competing distributors may not lawfully agree to limit their individual freedom of action by a contract binding them, in the marketing of their superior copyrighted product, to do business with their customers in uniform manner—in the *Straus* case by selling books only to those who would maintain resale prices, in the *Paramount* case by using a standard form of film license contract with exhibitors providing for compulsory arbitration of disputes. The Court distinguished the *Bement* and *General Electric* cases, saying: "Appellants argue that the distributors were free to license the films for exhibition subject to the restrictions, just as a patentee in a license to manufacture and sell the patented article may fix the price at which the licensee may sell it. *Bement* v. *National Harrow Co.*, 186 U. S. 70; *United States* v. *General Electric Co.*, 272 U. S. 476. That the parallel is not complete is obvious. Because a patentee has power to control the price at which his licensee may sell the patented article, it does not follow that the owner of a copyright can dictate that other pictures may not be shown with the licensed film or the admission price which shall be paid for an entertainment

which includes features other than the particular
8867 picture licensed. Cf. *Motion Picture Patents Co.* v. *Universal Film Mfg. Co.*, 243 U. S. 502; *Carbice Corporation* v. *American Patents Development Corp.*, 283 U. S. 27; *Leitch Manufacturing Co.* v. *Barber Co.*, 302 U. S. 458." (306 U. S. at 228) But the Court held it was not necessary "to pass upon these or related questions" because granting that "each distributor, in the protection of his own copyright monopoly, was free to impose the present restrictions upon his licensees * * * they were not free to use their copyrights as implements from restraining commerce in order to protect" a first run exhibitor's picture theatre monopoly "by suppressing competition with it" by the second run theatres. (306 U. S. at 228.)

The case is distinguishable from the *Bement, General Electric* and instant cases: In the *Interstate Circuit* case the price and double feature restrictions of the license contracts with the second run exhibitors were not purposed to secure to the distributor-copyright-owners the pecuniary reward of their copyright monopolies, because they were not themselves exhibitors of pictures; the restrictions were intended, as said by the Court, to suppress the competition of the second run theatres against the first run exhibitors. Whereas in the *Bement, General Electric* and instant cases the price restrictions in the several license agreements were for the protection of the patent monopoly of the respective licensors, and were not purposed to suppress competition between the licensees and third parties. Even assuming a general agreement between USG and its (prospective) licensees that the several license contracts should be executed, the net result of all of the individual license agreements when executed would not exceed the right of USG to fix the prices at which the patented product should be sold by any or all in the industry who made it under USG patents; as said in topic VI of this opinion, the totality of illegal restraint would be none. Moreover, as also stated in topic VII, we find in the instant case no general agreement.

The *Masonite* case: The Masonite Corporation owned patents on a product known as "hardboard" and itself manufactured and sold the same. It constituted competing manufacturers of building materials its del credere "agents" for the vending of hardboard, through their respective sales organizations, at prices and under terms and conditions fixed by Masonite and to be followed by it. Masonite also agreed to issue to the "agents" at their request "a license

to manufacture and sell hard boards" under its patents upon specified terms and conditions and for a cash consideration, but this option was not exercised by the "agents." The Court, treating the "agencies" for the purpose of the decision as bona fide del credere agencies, nevertheless held that the form in which the parties chose to cast the transaction was not to govern and that the "agency" ar-
8868 rangements in reality presented a *Bloomer* v. *McQuewan*,[58] *Addms* v. *Burke*,[59] *Hobbie* v. *Jennison*[60] pattern wherein when a patented product "'passes to the hands of the purchaser, it is no longer within the limits of the monopoly. It passes outside of it, and is no longer under the protection of the act of Congress.'" (316 U. S. at 278, quoting from 14 How. at 549) The Court said:

> * * * Doubtless there is a proper area for utilization by a patentee of a *del credere* agent in the sale or disposition of the patented article. A patentee who employs such an agent to distribute his product certainly is not enlarging the scope of his patent privilege if it may fairly be said that that distribution is part of the patentee's own business and operates only to secure to him the reward for his invention which Congress has provided. But where he utilizes the sales organization of another business—a business with which he has no intimate relationship—quite different problems are posed since such a regimentation of a marketing system is peculiarly susceptible to the restraints of trade which the Sherman Act condemns. And when it is clear, as it is in this case, that the marketing systems utilized by means of the *del credere* agency agreements are those of competitors of the patentee, and that the purpose is to fix prices at which the competitors may market the product, the device is, without more, an enlargement of the limited patent privilege and a violation of the Sherman Act. In such a case the patentee exhausts his limited privilege when he disposes of the product to the *del credere* agent. He then has, so far as the Sherman Act is concerned, no greater rights to price maintenance than the owner of an unpatented commodity would have. *Dr. Miles Medical Co.* v. *John D. Parks & Sons Co.*, 220 U. S. 373. * * * [316 U. S. at 279-80.]

The Court distinguished the decision in the first part of the *General Electric* case by saying that the Court thought in

58 14 How. 539 (U. S. 1852).

59 17 Wall. 453 (U. S. 1873).

60 149 U. S. 355 (1893).

that case that the purpose and effect of the marketing plan were to secure to the patentee only a reward for his invention, but that that was not true in the *Masonite* case. In respect of the decision in the second part of the *General Electric* case, the Court said: "We do not have here any question as to the validity of a license to manufacture and sell, since none of the 'agents' exercised its option to acquire such a license from Masonite. Hence we need not reach the problems presented by *Bement* v. *National Harrow Co.*, 186 U. S. 70, and that part of the *General Electric* case which dealt with the license to Westinghouse Company. Rather, we are concerned here only with a license to vend. * * *" (316 U. S. at 277.)

The distinctions thus taken by the Court as to the *Bement* and *General Electric* cases are valid in respect of the instant case (as they must be if, as we hold, the instant case parallels those two cases). In the instant case, as in the *Bement* and *General Electric* cases, the patent owner USG, although a manufacturer and seller of gypsum board, is not one that sells through the sales organizations of its competitors; although it manufactures board, it does its own selling. It is to be noted further that horizontal operation of price control is necessarily implied in the ruling in the *General Electric* case that the owner of a product patent may grant a license to manufacture and sell with restrictions upon the licensee's price, for one who takes and operates under such a license will *ipso facto* be a competitor.

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IX

Conclusion

In the previous topics we have discussed with particularity the evidence and the contentions of the parties in respect of the issues of fact and law in the instant case, and have set forth in some detail the reasons for the decision which we reach. This has required an extended opinion. The case may now be summarized.

The complaint of the Government charges violations of Sections 1, 2 and 3 of the Sherman Act and seeks, under Section 4, an injunction. It alleges that the defendants are parties to contracts in restraint of trade and commerce, and that they have combined and conspired to restrain, and have attempted to monopolize and have monopolized, trade and commerce in gypsum products, by means of the

execution of sham patent licenses granted by the defendant USG and accepted by the other defendants and designed only to give color of legality to the combination and conspiracy charged. It alleges that the defendants have combined and conspired to fix prices upon gypsum board and upon miscellaneous gypsum products made and sold by them, to standardize such board and its method of production, to eliminate jobbers from the distribution of gypsum products, and to induce manufacturing distributors to resell at prices fixed by the defendants gypsum board purchased from them, and it is alleged that these unlawful purposes were effectuated. All of this is asserted to have taken place in interstate commerce in the "Eastern area" of the United States, comprising, roughly, all of the states east of the Rocky Mountains, and the state of Wyoming and a part of the state of Montana. The defendants admit the execution of patent licenses to make, use and sell gypsum board under terms and conditions, including minimum prices, to be established by USG, and admit that they sold such board under such terms and conditions; but they assert that this is legitimate under the patent laws. In respect of the charge of monopoly the defendants do not deny that they make and sell substantially all of the gypsum board in the "Eastern area," but they assert that to the extent that they have a "monopoly" upon the production and sale of such board it is legitimatized by the patent laws and the license agreements. They deny that the licenses were sham or that they were entered into to disguise an illegal combination. They deny all of the other charges. The defendants rely upon the *Bement* and *General Electric* cases. The Government relies principally upon the *Standard Sanitary, Masonite, Interstate Circuit* and *American Equipment* cases. At the close of presentation of evidence by the Government the defendants moved to dismiss under Rule 41 (b) of the Federal Rules of Civil Procedure. This is the frame of the case in its substantive aspects.

In the adjective aspects of the case: The Government urges that on motions to dismiss under Rule 41 (b)
8870 and despite the absence of a jury the court must determine only whether the case presented is sufficient to submit to a jury, and if so put the defendants to their proof. The defendants contend that the court is to weigh the evidence and if it finds it insufficient render judgment of dismissal on the merits. The Government contends that the burden is upon the defendants by way of confession

and avoidance to justify under the patent licenses the restraints of trade charged. The defendants urge that the burden of proving lack of bona fides in the license agreements is upon the Government. On these two issues we sustain the contentions of the defendants. (Topics I and III.) The defendants have moved to strike certain declarations of alleged co-conspirators received in evidence subject to connection by proof, independent of the declarations, of the existence of the conspiracy charged. The Government contends that such proof has been made, the defendants that it has not. We hold that there is no evidence independent of the declarations of the conspiracy charged and that the motions to strike are therefore well taken. (Topic IV.)

On the substantive side of the case and in respect of the law: The *Bement* and *General Electric* cases sanction price fixing by a patent owner on sales of a patented product by one or more licensees if—as in those cases—the terms and conditions of the licenses are reasonably adapted to securing the rewards of the patent monopoly, and if—as in those cases—the licenses are bona fide. We think that the *Bement* and *General Electric* cases and the instant case are substantially parallel on their facts so far as the nature of the patents upon which the licenses were founded, the terms and conditions of the license agreements, and the extent of control of manufacture and sale of the respective products are concerned; and we hold therefore that the licensing arrangements, including price fixing, in the instant case are lawful unless the licenses were sham. (Topic II.) This leaves for determination two principal questions of fact, one, were the licenses sham or were they bona fide; the others, were the operations of the defendants carried beyond the license terms, *i.e.*, beyond the proper limits of the USG patent monopoly, or were they not. We hold, weighing the evidence, and whether the declarations of the alleged co-conspirators be considered, because not connected, as binding only upon the declarants, or whether they be considered as binding upon all, that the evidence fails to show the licenses sham—on the contrary shows that they are bona fide—and fails to show that the operations of the defendants went beyond the proper limits of the USG patent monopoly. We hold that the evidence shows no improper standardization of gypsum board, no price fixing on plaster and miscellaneous gypsum products, no elimination of jobbers, no fixing of the prices at which manufacturing distributors sold gypsum board purchased from the defendants.

The evidence shows price fixing by USG on board
8871 manufactured and sold by the defendants, but we hold that since the licenses are bona fide this is sanctioned by the *Bement* and *General Electric* decisions. (Topics V, VI and VII.) We think the *Standard Sanitary, Masonite, Interstate Circuit* and *American Equipment* cases distinguishable from the instant case and the *Bement* and *General Electric* cases. (Topic VIII.)

In respect of a special contention of the Government that the evidence shows a plan participated in by the defendants "to blanket" the industry under patent licenses and stabilize prices and that this is illegal: We hold that even if proof of such a plan be assumed, *arguendo*, the contention as to its illegality cannot be sustained in the absence of sham licenses and an intent to accomplish objectives beyond the proper limits of the patent monopoly. But we hold also that the evidence fails to prove that the defendants associated themselves in a common plan to execute patent licenses and stabilize prices. (Topic VII.)

It is apparent upon a review of the record in this case that the licensing arrangements which are the subject of the action, rather than being part of a scheme to circumvent the Sherman Act, were entered into as the result of a confluence of certain legal and economic factors. During the period from 1912 to 1937, that is, from the development and patenting of the Utzman closed-edge board to the execution of the Kelley perforated lath license, the last of the so-called subordinate contracts, USG was, or became, the owner of patents or patent applications covering gypsum products whose superior qualities gave that company a substantial competitive advantage over other manufacturers. These patents were, notably, including those for the Utzman closed-edge board and for the process and the machine for making it, the Birdsey partially closed-edge board patent, the Roos foam or bubble board patents, the starch board patents of Hite and Haggerty, and the Roos metallized board and perforated lath patents. The products covered by these patents eliminated trimming and wastage, lightened the board for handling and freight, made unnecessary the use of the unsatisfactory sawdust aggregate in board, solved the "peeler" problem, provided a thermal insulating element, and satisfied fire regulations. In short they accomplished modern mechanized high speed gypsum board production. The trade demanded these superior products. Without the right to make, use and sell them the

manufacturers other than USG would be distinctly disadvantaged. In this situation copying commenced. USG showed a determination to protect its patents in the courts, and in the litigation against Bestwall and Beaver in the early nineteen twenties in respect of the Utzman product and process patents it succeeded in doing so. After the decisions favorable to USG in that litigation closed-edge board could not be manufactured and sold by others
8872 without infringement of USG's rights. Also, in 1926, USG secured judicial affirmance of an award of priority for its Birdsey patent, over Clark. USG sued American for infringement of both the Utzman closed-edge and the Birdsey partially closed-edge patents; sued Universal for infringement of the Utzman patents and made a claim against it for infringement of the Birdsey patent; filed two suits against National; and served upon Niagara a notice of infringement. This litigation extended to 1928, when the second suit against National was filed. The manufacturers other than USG must, it was now obvious, in view of the trade demand, either copy and litigate, themselves devise successfully competitive products, cut prices on inferior products, such as open-edge board, at business loss, or pay damages (those that had infringed) and take licenses. USG was willing, upon terms of payment of damages (where infringement had occurred), acknowledgment of the validity of its patents, payment of royalties and the right in USG to fix the prices on gypsum board made and sold under the licenses, to grant licenses. The Supreme Court had in the *General Electric* case in 1926, confirming the ruling of the *Bement* case in 1902, recognized licensing and price control under the patent laws, notwithstanding the Sherman Act. In the foregoing situation, various of the expedients or alternatives open to the manufacturers other than USG were availed of. Beaver, Universal, Atlantic and Texas in the early period 1926-1927 took licenses and made the closed-edge board, Beaver and Universal paying damages. National and American both suffered the litigation. Some of the companies, eventually all, cut prices—in the price war of 1927-1929—with distressing results. Universal fell into receivership. American attempted to develop a competitive product in the semi-protected edge board of Clark, but this failed in the interference proceeding in which priority was awarded to Birdsey. After the two years of price war, Certain-teed, National, Ebsary and Niagara were ready for licenses. They needed the closed-edge board;

they desired to settle or avoid litigation; they anticipated a price advance under USG bulletins. Certain-teed, believing that it could continue to press the open-edge board upon the trade, had long been unwilling to take a license with price control. But the trade demanded the closed-edge board. Certain-teed, moreover, had a million dollar overhanging bond in a suit brought by USG to compel Certain-teed to assume the liabilities of Beaver under its settlement and license, Certain-teed having purchased the assets of Beaver. National settled the two infringement suits pending against it, paying damages. Ebsary found it extremely hard to sell the open-edge board and therefore took a license. Niagara disposed of USG's claim against it by taking a license and paying damages. These were the so-called May 1929 licenses.

USG then offered licenses under the Roos foam board patent applications to its outstanding licensees. Discussions concerning the advantages and disadvantages
8873 of this board and negotiations in respect of the offered licenses followed. Universal, though it took a license under the Utzman patents in 1926, had acquired the Hite and Haggerty starch patents, and there had been copying. It secured a judgment against National in 1927 establishing the validity of the Haggerty patent. In the summer of 1929 Universal claimed that USG, in the use of starch in its board to obtain adhesion between core and liners, was infringing. Universal now, in order to obtain funds with which to get out of receivership, sold the Hite and Haggerty patents to USG. After USG thus became the owner of these starch patents, one of which had been validated, and included them in its offer, licenses were, between October, 1929, and February, 1937, accepted by Niagara, Certain-teed, National, Ebsary, Atlantic, Universal, American, Kelley and Texas. American had attempted to get more favorable license terms than the other companies and had, as said above, attempted to develop, for competition with the closed-edge board, the semi-protected edge board of Clark. But USG's pending suit against American for infringement of the Birdsey partially closed-edge patent, once postponed, but reinstated, had by now, the summer of 1929, been decided in favor of USG; and the USG Utzman patent infringement suit against American was still pending. American renewed its efforts at concessions, but finally in November, 1929, and on the terms originally offered by USG at the time of the Beaver license, settled the outstanding suits and took a license from

USG, paying damages. The Texas license was the last of what have been called the November 1929 contracts, under the Roos foam patent applications, the Hite and Haggerty starch patents, and others.

Finally the perforated lath and metallized board licenses were offered by USG. The licensees needed these products to be competitive and in 1934-1935 National, Kelley, Certain-teed, Atlantic, American, Universal and Ebsary took the metallized board licenses; and in 1936-1937 Certain-teed, American, Ebsary and Kelley signed the perforated lath contracts. Thus over a period of eleven years, 1926-1937, the licensing arrangements in the instant case were completed.

In this running account of the development of the licensing arrangements is seen the operation of legal and economic factors which naturally, if not, indeed, inevitably, brought the arrangements about—the superiority of the products to which USG had patents, the validation of patents in the courts in favor of USG and Universal, the difficulties of litigation actual and threatened, the demand of the trade for the superior products, price cutting, the failure, except in the case of Universal, which sold its patents to USG, to develop competing products, the force of the *Bement* and *General Electric* rulings, and finally the decision of USG, under those cases, to share its patent monopoly. We think it clear, in the light of these factors
8874 which were operating upon the industry over the years in question, that the licenses were not a part of a scheme to restrain trade in violation of law by subterfuge as charged, but the result of a choice by the manufacturers other than USG to follow under bona fide licenses the pathway recognized by the Supreme Court, *i.e.*, to accept licenses subject to price control. All that was done, including the intra- and inter-company discussions of the advantages and disadvantages of licensing, and including the negotiations for licenses, was necessarily incident to the granting and acceptance of a plurality of patent licenses.

In view of the parallel between the *General Electric* and *Bement* cases and the instant case, and in view of the failure of proof that the licenses were sham or that the operations of the defendants went beyond the proper limits of the USG patent monopoly, the case of the Government is reduced to the contention that a plurality of licenses is wrongful—that under the *Bement* and *General Electric* cases but a single license may be granted with price fixing provisions. In re-

spect of this we reiterate that it would be an irrational fixation to construe the *Bement* and *General Electric* decisions as limiting licensing with price fixing restrictions to a single licensee, since the public is equally excluded and equally subjected to the patent owner's price whether there is no licensee, one licensee, or more. If USG had granted no licenses, all of the patented board would then have been made and sold by USG at its own price, and without competition in sales service. In the instant case if all but one license were stricken down, upon the theory that a plurality is wrongful, USG and the single licensee would then make and sell all of the patented product at the prices determined by USG. The extent of the monopoly is not altered by its division. In the *General Electric* case there was a plurality of licenses. While only the Westinghouse license contained a price restriction, the group of licenses granted by General Electric to Westinghouse and its other licensees contemplated a prorating of business between the licensor and all of the licensees, and included also type restrictions. Prorating and type restrictions are, as fully as price fixing, violations of the Sherman Act in the absence of legitimatizing patents. There was a plurality of licenses in the *Standard Sanitary* case and also in the *Interstate Circuit* case, but the holding in those cases that the licensing arrangements violated the Sherman Act was not upon that ground. The same is true of the *American Equipment* case.

Although, for the reasons set out in topic IV, we consider as well taken the defendants' motions to strike the declarations which were received in evidence subject to connection, it is not necessary formally to rule upon those motions. Since we have considered the declarations both as binding upon the declarants alone and as binding upon all
8875 of the alleged co-conspirators, the exhibits and testimony received subject to connection may remain in the record.

The motions to dismiss the Government's complaint will be granted. Counsel for the defendants will prepare, serve upon the Government and present to the court proposed findings of fact, conclusions of law and judgment of dismissal upon the merits.

I am authorized to state that Judges Garrett and Jackson concur in this opinion.

HAROLD M. STEPHENS.
FINIS J. GARRETT.
JOSEPH R. JACKSON.

8876 IN DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF COLUMBIA
Civil Action No. 8017

UNITED STATES OF AMERICA, *plaintiff*

v.

UNITED STATES GYPSUM COMPANY, *et al., defendants*

[File endorsement omitted.]

Findings of fact and conclusions of law

Filed Aug. 5, 1946

This cause having come on for trial, and the Court having heard and considered the testimony and exhibits introduced, and having read and considered the briefs filed by the respective parties, and having heard and considered oral argument of counsel for the respective parties, and after due deliberation, and having filed its written Opinion on June 15, 1946, the Court makes the following Findings of Fact and Conclusions of Law:

Findings of fact

1. This is an action in equity instituted by the United States, hereinafter referred to as the Government, to restrain the defendants from alleged violations of Sections 1, 2 and 3 of the Sherman Act. Injunctive relief is sought under Section 4.

2. The corporate defendants are: United States Gypsum Company (hereinafter referred to as USG), National Gypsnm Company (National), Certain-teed Products Corporation (Certain-teed), The Celotex Corporation (Celotex), Ebsary Gypsum Company, Inc. (Ebsary), and Newark Plaster Company (Newark). The individual defendants are Samuel M. Gloyd, doing business under the name of Texas Cement Plaster Company (Texas), Sewell L. Avery, Oliver M. Knode, Melvin H. Baker, Bror G.
8877 Dahlberg, Henry J. Hartley, Frederick G. Ebsary, and Frederick Tomkins. Avery was president of

USG from 1905 to 1936, and since then has been chairman of the Board of Directors. Knode is president* of USG. Baker is president of National. Dahlberg is president of Celotex and chairman* of the Board of Directors of Certain-teed. Hartley is president* of Certain-teed. Ebsary is president of Ebsary.. Tomkins is president of Newark.

3. The defendants are engaged in the mining of gypsum rock and in the manufacture and in the sale in interstate commerce, in the "Eastern area" of the United States, of gypsum board, gypsum plaster, and miscellaneous gypsum products defined in a bill of particulars as gypsum block, gypsum tile, and Keene's cement. The "Eastern area" includes all of the states of the United States from the East Coast westward to and including New Mexico, Colorado, Wyoming, and the eastern half of Montana.

4. Gypsum board consists of two outer sheets of heavy tough paper, front and back, called "liners," between which there is a lightened gypsum core which is firmly bonded to the paper. Gypsum wallboard is a product used as a finished interior wall. Gypsum lath or plasterboard is a product used as a base to which a coat of plaster may be applied. The term board as hereinafter used includes wallboard and lath or plasterboard. In the manufacture of gypsum products the raw gypsum rock is first subjected to calcination—the process of driving off the water of crystallization by heating. Calcined gypsum, or stucco, when mixed with water, resumes the original content thereof so that the manufactured product is chemically substantially the same as the raw rock and has the
8878 same properties. In the reforming process the manufacture of the products above described is made possible. The products are extensively used in the building industry.

5. In the early periods of its manufacture gypsum board was crudely made by pouring buckets of calcined gypsum mixed with water in thin layers between multiple pieces of rough felt paper, smoothing the product with rollers, hardening it on racks and trimming the pieces to size. This was a hand operation. In 1912 the defendant USG commenced the development of more efficient methods of manufacture of gypsum products. An important ad-

* As of the time when the suit was filed.

vance was in the making, by virtue of patent No. 1,034,746, issued in 1912 to USG on application of an inventor-employee named Clarence W. Utzman, of "closed-edge board." Prior to 1912 gypsum board had been made with exposed edges. This required trimming, and there was also breakage in shipping and use, with consequent wastage. The making of closed-edge board solved this problem. Various other improvements were developed, including a board making machine, the use of foam as a substitute for sawdust as an "aggregate" in the gypsum core to lighten the board, and the use of starch to improve the bond between paper and core. Metallized board, gypsum board covered with metallic foil, was devised for purposes of insulation; and a gypsum lath perforated in such manner as to increase the fire resisting qualities of wall structure was devised. These improvements were covered by patents—product, process, and machine—many of which were issued to USG; others were acquired by that company. A demand arose in the trade for these improved products, and companies other than USG commenced to copy them. There ensued many years of litigation in which USG strove to enforce, and eventually succeeded in enforcing, its patent rights.

8879 6. Prior to 1917 the Bestwall Manufacturing Company (Bestwall) commenced the manufacture of closed-edge board, USG sued for infringement and won. *Bestwall Mfg. Co.* v. *United States Gypsum Co.*, 270 Fed. 542 (C. C. A. 7th, 1921), *cert. denied*, 263 U. S. 713 (1923). Bestwall had, however, in the course of the litigation, been acquired by The Beaver Products Company, Inc. (Beaver), and USG by a supplemental bill sued both of these companies for infringement and again prevailed. *United States Gypsum Co.* v. *Bestwall Mfg. Co.*, 15 F. (2d) 704 (N. D. Ill. 1925). These decisions made the manufacture of closed-edge board by a competitor of USG impossible without infringement of USG's patent rights. Prior to the last mentioned decision, Augustus S. Blagden, president of Beaver, made overtures of settlement to Sewell L. Avery, president of USG; he continued these efforts after the decree under the supplemental bill. Avery, at a meeting with Blagden in December, 1925, specified as terms of settlement the payment of damages by Beaver for infringement of USG's patents, acknowledgment by Beaver of the validity of USG's patents, payment of royalties,

and the right in USG to fix prices of gypsum board made and sold by Beaver under the Utzman closed-edge patent. A settlement agreement was executed on July 29, 1926, Beaver paying $250,000 cash damages and USG granting Beaver a license to make, use and sell the patented products, to use the patented processes and to make and use the patented machines.

7. In September, 1925, after the decision against Beaver, USG sued The American Gypsum Company (American) and the Universal Gypsum and Lime Company (Universal) for infringement, and served a
8880 notice of infringement upon the Niagara Gypsum Company (Niagara). On September 17, 1926, a settlement and license agreement was entered into with Universal similar to that with Beaver, except that the lump sum payment was approximately $35,000. A license agreement was entered into between USG and the Atlantic Gypsum Products Company (Atlantic) on March 5, 1927. In this instance no damages were paid, Atlantic not having previously made gypsum board. Texas signed a license agreement on April 11, 1927. This contract was not by way of settlement of an existing claim of infringement, although it stated that Texas had equipped its plant to make closed-edge board and that USG was threatening to sue if such board were produced.

8. These four license contracts are for convenience referred to in the record as the "1926-1927 contracts." The licenses granted were under two Utzman patents No. 1,034,746 (the product patent) and No. 1,029,328 (a process patent), and under a third Utzman patent No. 1,330,413 (a machine patent) expiring February 10, 1937, under a Birdsey patent No. 1,358,508 (a product patent for partially closed-edge board), and under some sixty or more other patents and applications for patents. The material provisions of the contracts were these: USG granted an indivisible and non-exclusive license until the expiration of the Utzman machine patent on February 10, 1937. It reserved the right to fix during the life of the Utzman product patent, expiring August 6, 1929, the minimum prices at which the licensees might sell board embodying the disclosure of that patent, but at not more than the prevailing market price. For the privilege of manufacturing, using and selling gypsum board under the patents, the licensees agreed to pay an amount equivalent to a desig-

nated percentage of the selling price of the licensees
8881 on all gypsum board manufactured by them, whether patented or not, until February 10, 1937, the date of the expiration of the machine patent; they acknowledged and agreed not to contest the validity of the patents under which the licenses were granted; they agreed that all of the patented products sold by them and known in the trade as "seconds" should be invoiced and marked as "seconds." USG agreed that the licensees might sell patented gypsum board to manufacturers of plaster and gypsum products who did not themselves make board (referred to in the record as "manufacturing distributors"), the royalties payable to remain based upon the regular selling price of the licensees to the regular dealer trade. The licensees agreed to keep separate records showing the quantity of all board sold by them, and periodically to render reports to USG showing the quantities and prices of their sales. USG reserved the right to inspect and to make copies of the licensees' memoranda from such records.

9. In May, 1929, following further litigation, four more license contracts were entered into between USG on the one part and Certain-teed, National, Ebsary, and Niagara, on the other part. In 1923 Certain-teed, originally a manufacturer of roofing products, entered the gypsum industry with the acquisition of the Acme Cement Plaster Company (Acme). In 1926 it commenced the manufacture of open-edge gypsum board at the former Acme plant in Texas. On January 20, 1928, it purchased the assets of Beaver. Beaver was then making a closed-edge board. Certain-teed refused to assume the Beaver-USG settlement agreement and license. USG thereupon, on or about February 21, 1928, instituted suit in the District Court of the United States in Illinois against Certain-teed and Beaver, seeking
an injunction against the distribution of the pro-
8882 ceeds of sale to the Beaver stockholders and asserting that Certain-teed should be required to assume all liabilities of Beaver under its settlement agreement and license. Certain-teed was required to put up a million dollar bond, or otherwise to suffer a temporary injunction, as security for damages which might be found due to USG. On May 22, 1929, Certain-teed settled this suit with USG, agreeing to pay damages of approximately $64,000 and to fulfill the obligations of Beaver under its original settlement agreement and license; USG executed in Certain-teed's favor a patent license agreement and the suit was

dismissed and the bond released. A supplemental license agreement between USG and Certain-teed covering a bundling process patent was executed on July 3, 1929. On May 16, 1929, National settled two patent infringement suits which USG had brought against it, one on November 5, 1926, the other on May 7, 1928, paying on account of damages approximately $178,000 and entering into a patent license agreement with USG. National had commenced the manufacture of a modified closed-edge gypsum board in 1926. Ebsary, which had commenced making open-edge gypsum board in 1928, was granted a patent license by USG on May 22, 1929. This license was not a part of settlement of an infringement claim, since Ebsary had not manufactured closed-edge board and there was no infringement suit or basis therefor against it. Niagara commenced making an open-edge gypsum board, but later made board with a semi-protected edge covered by a Clark application for a patent owned by American. This board had been developed by American in an attempt to compete with USG's closed-edge board. USG claimed that this board infringed its Birdsey patent No. 1,358,508 covering the manufacture of board with a partially closed edge. Pri-
8883 ority over the Clark application had been awarded Birdsey by the Commissioner of Patents; this was affirmed by the Court of Appeals of the District of Columbia in 1926. *Clark* v. *Birdsey*, 56 App. D. C. 136, 10 F. (2d) 1001. A contract of settlement was entered into between Niagara and USG in May, 1929. This contract is not in evidence but is referred to in a later license agreement between Niagara and USG dated October 8, 1929, in which it appears that the earlier contract provided for money damages to USG in the sum of approximately $28,000 and a patent license to Niagara.

10. The four license contracts between USG on the one part and Certain-teed, National, Ebsary and Niagara on the other part, are called the "May 1929 contracts" in the record. The provisions of these four contracts were in substance the same as those of the 1926-1927 license agreements except that in the May 1929 contracts the only restriction on USG's right to fix minimum prices for patented board was that the right expired on August 6, 1929, the date of expiration of the Utzman product patent, and sales of the patented product to manufacturing distributors and jobbers were permitted only on USG's writ-

ten consent. These contracts involved the same patents as the 1926-1927 agreements, with a Birdsey "bundle" patent No. 1,696,877 added covering a method of bundling gypsum board for shipment by binding several boards together into a stack through the application of a gummed tape lengthwise along the edges of the boards. Use of this bundling method was required by the contracts.

11. In 1929 USG owned three applications for patents of Carlisle K. Roos covering cellular core gypsum board produced by the employment of foam or a foaming agent in the core of the board to produce a multitude of
8884 cells or voids thereby lightening the board, eliminating the use of sawdust, which had been an unsatisfactory material, as an "aggregate," and resulting in quicker drying. These applications were in interference with an application for a patent by Erick Christian Bayer, a foreign patentee, the American rights to whose patent had been acquired by USG. The Roos applications prevailed in the interference proceeding and Roos patents Nos. 2,017,022, 2,079,338, and 2,080,009 were ultimately issued to USG (October 8, 1935, May 4, 1937, and May 11, 1937, respectively). On May 23, 1929, after the last of the May 1929 license agreements had been executed, Avery of USG described the scope and nature of the Roos bubble board invention and outlined its advantages, including weight reduction, lower freight cost, elimination of the sawdust problem, easier handling and quicker drying, and offered the various licensees above referred to a license on this invention.

12. Shortly after this, Universal through its president and co-receiver, Eugene Holland, claimed that USG, by using starch in its board to obtain adhesion between the core and paper liners, was infringing two patents owned by Universal known as the Hite and Haggerty patents Nos. 1,230,297 and 1,500,452, respectively. The Hite patent covered a heat insulating material and method of making the same. The Haggerty patent covered a gypsum plaster wallboard employing starch or a cooked carbohydrate in the core of the board to insure a good bond between the core and the paper covering sheets. This had solved the "peeler" trouble in the gypsum board industry and made possible modern high speed production of gypsum board. Without it, high temperatures used to expedite drying of the board would result in defective board in the form of

"peelers," i.e., board having insufficient bond between
8885 the liners and the core. In 1927 Universal had brought suit in the United States District Court in Buffalo, New York, against National for infringing of the Haggerty patent, demanding an injunction and an accounting, and the court had ruled that the Haggerty patent was valid and infringed (*Universal Gypsum & Lime Co.* v. *Haggerty*, 21 F. (2d) 544 (W. D. N. Y. 1927)), and National had posted a substantial bond rather than suffer enforcement of a temporary injunction. Avery told Holland that it was not USG's policy to infringe patent rights and that he would investigate the claim. In June and July of 1929 negotiations were going on between USG and its various licensees in respect of a possible license covering the bubble board invention, and the various companies were investigating to ascertain whether the invention had merit. During this same period Holland continued to discuss with Avery separately the matter of the alleged infringement of the Haggerty and Hite starch patents. As a result of these discussions USG agreed to purchase and did purchase these patents. Universal was in receivership and the sale was a favorable one from its standpoint because it provided Universal with substantial funds permitting it to reorganize and emerge from receivership with its accounts paid. The original and ancillary receivership proceedings were in seven different Federal district courts and the sale was approved by all of these courts on or about November 5, 1929. The sale was consummated in a license contract of November 5, 1929, which settled a claim of USG against Universal for infringement of USG's partially closed-edge patent and the claim of Universal against USG for infringement of the Hite and Haggerty patents. The Hite and Haggerty patents were assigned to USG with reservation of royalty to Universal. Universal was itself granted a license under these patents and
8886 under the Birdsey patent No. 1,358,508 and under patents which might be issued under the Roos and Bayer applications and under numerous other patents. This license contract superseded the 1926 license agreement between USG and Universal. In August, 1929, USG had announced its arrangement to purchase the Haggerty and Hite patents and offered its licensees new licenses which would replace the prior license contracts and include in one document the outstanding patents of the earlier licenses, the Haggerty and Hite patents, and the applica-

tions for patents on the Roos bubble board invention. This offer was made subject to the approval of the district courts above referred to.

13. Niagara on October 8, 1929, Certain-teed on the 15th, National on the 17th, Ebsary on the 18th, and Atlantic on the 21st, entered into new patent license contracts with USG which superseded the previous agreements between these companies and USG, and these new contracts covered the Hite and Haggerty patents and also the anticipated patents under the Roos and Bayer applications as well as the unexpired patents of the earlier contracts.

14. As found above, USG had in September, 1925, instituted a suit against American for infringement of USG's closed-edge patent. It had also in the same month commenced a suit against American for infringement of the Birdsey patent on partially closed-edge board. American attempted to obtain a more favorable settlement than had been granted to other infringers. USG's infringement suit with respect to the Birdsey patent had been postponed pending settlement negotiations, reinstated, and ultimately tried and decided in favor of USG. Settlement discussions by American were resumed, with renewed efforts to obtain concessions with USG. On November 25, 1929,
8887 American finally settled its outstanding litigation with USG on the terms originally offered, *i.e.*, on terms similar to those of the earlier settlements with other companies, and accepted a license from USG similar to the license contracts of the other licensees. American paid in settlement of past infringement approximately $152,000. On April 23, 1930, Kelley Plasterboard Company, Inc. (Kelley) took a similar license. On January 3, 1939, USG consented to the assignment of this license to Newark. Texas did not enter into a license contract in 1929, but continued as a licensee under its license of April 11, 1927, although it was not subject to price control after August 6, 1929, the date of the expiration of the Utzman closed-edge patent, and no effort was made by any defendant or any agent of any defendant to establish or control the price at which Texas sold gypsum board during the period from August 6, 1929, until February 10, 1937, at which time its license of April 11, 1927, expired and Texas accepted a further license contract similar in form to the November 1929 contract with the other licensees. This completed the execution of the nine contracts generally

referred to in the record as the "November 1929 contracts" (although the Texas contract was not executed until 1937 and the Kelley contract not until April 23, 1930) with Niagara, Certain-teed, National, Ebsary, Atlantic, Universal, American, Kelley, and Texas. Each of these contracts extended licenses under the Haggerty and Hite patents, under patents which might be issued under the Roos and Bayer applications, and under a large number of patents still vital which had been the subject of the previous contracts, including the Utzman machine patent No. 1,330,413, Birdsey patent No. 1,358,508 on the partially closed-edge board, the bundle patent No. 1,696,877, and under patents which might be issued under several
8888 additional applications for patents. These November 1929 contracts were in general in the same terms as the earlier contracts. Each contained a "most favored nation" clause providing that if subsequent to the effective date of a particular agreement USG should grant to any other person, except to Universal, a license more favorable in terms, then USG would grant to the particular licensee a license on the same terms. The Texas contract alone in its "most favored nation" clause did not contain the exception to Universal. The price fixing clause contained a provision that the minimum prices fixed by USG should not be more than those at which USG determined to sell gypsum board or other products embodying the inventions claimed in the patents to its own like trade in the same market. Use of the Birdsey bundling process by the licensees was made optional.

15. Niagara was acquired by USG in 1929. National acquired Universal in 1935 and Atlantic in 1936. Newark acquired the stock of Kelley in 1937 and merged with Kelley in 1939. Celotex entered the gypsum industry for the first time when it acquired the assets of American in 1939. Upon acquiring these companies respectively National, Newark and Celotex took over the above-mentioned licenses which had been entered into by Universal, Atlantic, Kelley and American with USG.

16. In addition to the 1926-1927, May 1929, and November 1929, contracts which related to gypsum board as such (sometimes hereinafter referred to as the main board license agreements), certain additional contracts, sometimes referred to in the record as "subordinate contracts," relating to metallized board and perforated lath, were

executed as follows: At various times in 1934-1935 USG as owner of Roos patent No. 1,914,345 covering the
8889 use of metallic foil as a thermal insulating element in board granted licenses to various other companies. The license contracts in evidence are those of National of October 5, 1934, Kelley of October 12, 1934 (USG on January 3, 1939, consented to the assignment of this contract to Newark), Certain-teed of November 2, 1934, Atlantic of November 30, 1934, American of December 4, 1934 (assigned to Celotex on April 12, 1939), Universal of April 4, 1935, and Ebsary of August 14, 1935. In these contracts USG granted licenses to make, use and sell board having a metallized surface embodying the inventions disclosed and claimed in the patents or patent applications covered by the contracts, and reserved the right to fix the minimum prices on board embodying the inventions in question, but at not more than USG's own price in the same market. The licensees agreed to pay a royalty for all board having a metallized surface manufactured and sold by the licensees and covered by the claims of the patents issued or to be issued under applications for patents. The licensees agreed not to sell metallized board to other board manufacturers except upon USG's written consent, and not to sell to anyone on consignment. They agreed to acknowledge and not to contest the validity of the patents issued or to be issued and to record the quantities of metallized board manufactured "and/or sold," USG reserving the right to inspect and copy such records. Each licensee was accorded the position of a "most favored nation" with respect to licenses under these patents.

17. Similarly, USG was the owner of Roos patent No. 1,938,354 covering a fire resistant plasterboard. This board had holes of given size punched through it at designated intervals. Upon application of a coat of plaster the same pushed its way through the holes and hardened into a
mechanical key with consequent improvement of the
8890 fire resistant qualities of the wall in which such plasterboard was used. USG granted patent licenses to Certain-teed on June 8, 1936, American on July 10, 1936, Ebsary on February 2, 1937, and Kelley on June 23, 1937, for the manufacture, use and sale of this board. In substance the terms of these licenses were the same as those of the metallized board license contracts. Later USG offered a revised perforated lath license to its licensees royalty free, *i.e.*, extended an offer to include the perforated

board patent in the main board license agreement at no additional royalty. Such revised licenses were accepted by Certain-teed, Ebsary and Kelley. On January 3, 1939, USG granted Newark, which had merged with Kelley, a royalty free perforated lath license, at the same time canceling the Kelley revised license.

18. Minimum price bulletins were sent out by USG to its licensees under the various license contracts, except during the period from August 6, 1929 (the date of expiration of the Utzman product patent No. 1,034,746), until the date of the execution of the November 1929 contracts. The price bulletins are limited in their application to patented board manufactured and sold by each licensee under its license. The price on board was calculated on the basis of a mill price plus freight from the nearest mill (freightwise) to the point of destination. The bulletins provided for prices on various quantities of board such as carloads, less-than-carloads, and truckloads. In particular markets, such as metropolitan areas, where it was economic to deliver gypsum board in truckload quantities, prices were established for such quantities and the areas in which such prices were to apply were defined. Outside of such areas a higher price was fixed. Provision was made in various instances for a variation in price to cover pool car
8891 shipments, railroad switching charges, and "pick-ups" at a mill. The bulletins contained provisions purposed to prevent the violation of the minimum price requirements through such devices, in connection with a sale of board, as the giving away of board as "dunnage," making advertising allowances to the customer, granting of fictitious damage claims, splitting of commissions with the customer by commission salesmen, paying of unearned warehousing charges, fictitious hiring of customers' trucks, giving away of plaster or other products, or the sale of such products at a price unusually below the licensee's prevailing market price.

19. During the periods when price bulletins were sent out by USG to its licensees, each licensee, in the main, sold gypsum board manufactured by it at the prices and upon the terms and conditions stipulated in the bulletins. No bulletins have been sent out since July 8, 1941.

20. In 1932 USG set up as a department a wholly owned corporation called the Board Survey Company. Its func-

tion was to receive complaints of license violations, to investigate the facts, call them to the attention of the licensee involved, and upon occasion to the attention of the licensor USG. Board Survey Company was organized by USG for the purpose of bringing about compliance with the licensee. The licensees had no part in its formation, management or operation. From time to time a representative of USG, as licensor, met with representatives of the licensee companies for the purpose of explaining to them the provisions of the minimum price bulletins and for the purpose of securing adherence to such minimum prices by the licensees.

21. The defendants or their predecessors in interest were, at the time the license agreements were entered
8892 into, competitors in the manufacture and sale of substantially all of the gypsum board and a substantial part of the gypsum plaster made and sold in the "Eastern area," and the defendants now make and sell substantially all of the gypsum board and a substantial portion of the plaster in the "Eastern area." Sales of gypsum products are largely to retail dealers in building materials and mason supplies, rather than to building contractors and ultimate consumers.

22. The instant proceeding was filed on August 15, 1940.* A three-judge court was constituted on September 15, 1942. Preliminary to trial the Government propounded to the defendants an aggregate of 361 interrogatories, to many of which objections were filed. Hearings were had and rulings made on these objections. Thereafter the defendants, by virtue of amended answers containing pleas of *res judicata* based upon a disposition favorable to the defendants therein of the criminal case first described in the footnote, filed motions for summary judgment. These

* There have been two previous related proceedings. These were criminal indictments, both returned on June 28, 1940. One, *United States* v. *United States Gypsum Co. et al.*, No. 66008, in the District Court of the United States for the District of Columbia, charged USG, National, Certain-teed, Ebsary, Newark, and numerous officers and employees of these companies and of The American Gypsum Company (acquired by Celotex), with conspiring illegally to fix prices on gypsum board and to eliminate jobbers from the gypsum board industry; the other indictment, *United States* v. *Certain-teed Products Corp. et al.*, No. 66007, in the District Court of the United States for the District of Columbia, charged USG and Certain-teed with a conspiracy illegally to fix prices on perforated gypsum lath. The criminal case first described came on for trial in the fall of 1941, and on November 19, 1941, at the conclusion of the Government's case, a verdict was directed in favor of the defendants. A nolle prosequi was filed in the second case on September 17, 1942.

motions were argued orally and briefs were submitted, and the motions were denied on August 10, 1943
8893 (51 F. Supp. 613). Thereafter the defendants moved to strike, or alternatively for partial judgment dismissing, paragraph 46(a) of the Government's complaint as amended, which paragraph presented an issue as to the validity of certain of the patents upon which the November 1929 license agreements were based. These motions were orally argued and briefs were submitted upon them, and an order was entered on November 15, 1943 (53 F. Supp. 889), dismissing all of the Government's claim contained in paragraph 46(a) except the first and last sentences thereof.

23. The instant case came on for trial on November 15, 1943, and continued, with some intermissions, until the close of presentation of evidence by the Government on April 20, 1944. The testimony of 28 witnesses was heard and 641 exhibits, mostly of a documentary character, were received in evidence. Much of the testimony and most of the exhibits (448) were received in evidence subject to connection; 86 exhibits were offered but rejected. The record comprises since the commencement of the actual trial 7585 pages, exclusive of the exhibits. The later comprise several thousand additional pages. At the close of the Government's case the defendants moved to strike from the record all of the exhibits and testimony received subject to connection, on the ground that no *prima facie* showing of any conspiracy had been made, that such exhibits and testimony had not been shown to be in furtherance or in execution of any conspiracy, and that such exhibits had not otherwise been connected. The defendants moved also to dismiss the complaint with prejudice under Rule 41 (b) of the Federal Rules of Civil Procedure on the ground that upon the facts and the law the plaintiff had shown no right to relief. Briefs were submitted in advance of
8894 oral argument in support of and in opposition to the motions. After oral argument the motions were submitted and taken under advisement on May 29, 1944. The Government admitted that the motions should be granted as to Dahlberg. On June 6, 1944, additional briefs were filed, and on January 17, 1945, the court requested further briefs. The last of these was filed on March 14, 1945.

24. The principal patents upon which the main board license agreements in the instant case were founded, to wit,

the Utzman (No. 1,034,746), Haggerty (No. 1,500,452) and Roos (Nos. 2,017,022, 2,079,338 and 2,080,009) patents, were product patents upon a building material called plasterboard or wallboard. The patents were upon the entire product, not merely upon the edge of the board in the Utzman patent, or upon the starch in the Haggerty patent, or upon the bubbles or air cells in the Roos patents. These patents covered fundamental developments in the gypsum board manufacturing industry. The open-edge board which preceded the closed-edge board of the Utzman patent had defects in that there was in its manufacture wastage due to the necessary trimming of the board edge, the edge was weaker, and the core would sift out in handling and nailing. When the closed-edge board of the Utzman patent came into the market the open-edge board was largely displaced under the demand of the trade for the better product. The Haggerty patent, directed to the employment of starch or a cooked carbohydrate in the core of the board to insure a good bond between the core and the paper covering sheets, solved the "peeler" trouble in the gypsum board industry, and made possible the modern high speed production of gypsum board. The Roos patents, covering cellular core gypsum board produced by the employment of foam or a foaming agent in the core to produce
8895 innumerable cells or voids, thereby lightening the board and lending desirable nailing and other qualities thereto, supplanted the sawdust theretofore a necessary "aggregate" used in the core. Sawdust had become difficult to obtain and was moreover unsatisfactory as an "aggregate" because of variation in quality and character, which produced manufacturing difficulties. The use of the foam of the Roos patents solved these difficulties and produced a superior product with reduced manufacturing costs.

25. No substantial distinction can properly be drawn between the instant case and the *General Electric* case (272 U. S. 476) in respect of the importance of the patented improvements within the respective industries, or in respect of the nature of the patents which underlie the license agreements in the two cases. The patents, although on different materials, are of similar character and bear a similar relationship to the respective industries and the development thereof. The patents principally involved in the instant case no less, and no more, cover completely the patented product than do those principally involved in the *General Electric* case.

26. The price bulletins in the instant case contained two classes of provisions, one class providing how price should be arrived at, the other intended to protect the price fixed, *i.e.*, to prevent indirect price cutting in the sale of the patented product. The price provisions were drafted in view of the fact that the ultimate price at which the patented product is to be sold cannot be arrived at merely by naming an amount, but other factors which have economic relationship to price—such as terms of payment, cost of delivery to various areas, including freight
8896 charges, quantity sold, type of product sold, and the like must also be stipulated. The price protective provisions related only to the minimum prices established on the patented product and were designed solely to protect such prices.

27. The terms and conditions of the license agreements and price bulletins in the instant case, as compared with the terms and conditions, including price provisions, in the *General Electric* case, disclose no material distinction. In both cases the licenses were non-exclusive; there was to be no contest of the validity of the licensors' patents; there were provisions for royalties, records and reports. In both cases the licenses were granted upon the condition that the licensor should have the right to fix the minimum prices at which the licensee should sell the patented product, the prices to be charged by the licensor and licensee to be the same. In both cases, in respect of prices, there were two classes of provisions, one class providing how price should be arrived at, the other intended to protect the price fixed, *i.e.*, to prevent indirect price cutting. In both cases the provisions for arriving at price were drafted in view of the fact that the ultimate price at which a product is to be sold cannot be arrived at merely by naming an amount, but that other factors which have economic relationship to price—such as terms of payment, cost of delivery to various areas, including freight charges, quantity sold, type of product sold, and the like, must also be stipulated. The provisions of the licenses in the *General Electric* case and in the licenses in the instant case in respect of indirect price cutting, *i.e.*, the price protective provisions, are of similar character. If there is any difference between
8897 the provisions of the licenses in the *General Electric* case and in the instant case, it is in the greater stringency and complexity of those in the former.

28. The provisions of all of the license agreements in the instant case and the operations thereunder, including the bulletins issued by the licensor containing the price and price protective provisions, are reasonably and normally adapted to secure to USG the pecuniary reward for its patents and do not go beyond the limits of the monopoly granted by the patent laws.

29. The license agreements were executed at arm's length. There is no issue herein that their execution was obtained by coercion. Rather, the Government contends that the agreements were not bona fide but were sham agreements executed to disguise illegal purposes.

30. The evidence fails to establish that the agreements were not made in good faith or were intended only as sham agreements to disguise illegal purposes. On the contrary, the license agreements were executed as bona fide agreements and were intended to bind each party to the promises made therein. They were not sham agreements executed to disguise illegal purposes.

31. All of the license agreements except that of July 29, 1926 between USG and Beaver and that of September 17, 1926, between USG and Universal were executed after the decision in the *General Electric* case on November 23, 1926; and *Bement* v. *National Harrow Company* had long been decided (May 19, 1902) before the Beaver and Universal agreements were signed. The license agreements were executed upon the faith of these decisions. Prior to the making of the licenses in the instant case, the parties thereto had been advised that such licenses giving price control to the licensor were proper and that they had a right to enter into them under the patent laws.

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32. All of the license agreements (except only the revised perforated lath licenses accepted by three of the licensees when USG extended an offer to include the perforated board patent in the main board license agreement without additional royalty) required the licensees to pay, and they did pay, substantial royalties; and many of them were entered into, as hereinbefore found, in settlement of infringement litigation and in consideration of the payment of substantial damages, which damages were paid.

33. Commencing as early as 1926 when the Beaver license was negotiated, USG offered terms of settlement of infringement claims and a license to any or all of the

various board manufacturers. Throughout all of its negotiations with the various companies USG insisted upon these same terms which were: payment of damages for infringement, acknowledgment of the validity of USG's patents, payment of royalties, and the right in USG to fix prices upon board made and sold under its patents. At all times USG remained firm on these terms and rigidly insisted upon such terms for all settlements and licenses. American attempted to get better terms but USG remained firm that American should either pay in full for past infringement and for future use of the patents or go without the benefit of using them.

34. In the making of the licenses there was nothing furtive in the action of the parties. There was open negotiation and discussion between USG and the other companies in the industry of the proposed licenses and there was open discussion among the companies other than USG of their mutual problems arising out of USG's ownership and insistence upon enforcement of dominant patent rights in the gypsum board field.

8899 35. After the licenses were signed, they were enforced by USG and its agency, Board Survey, as valid and binding contracts and were so regarded by all the parties thereto. The enforcement of the license provisions after the licenses were signed, the formation by USG of Board Survey, and its activities to bring about compliance by all of the licensees with the terms of the licenses, and the meetings of USG with its licensees to explain to them the provisions of the minimum price bulletins and for the purpose of securing adherence to these bulletins by the licensees, affirmatively evidence good faith and that the licensor and licensees regarded the license agreements as valid and binding.

36. The companies which became licensees did so because they desired to settle or avoid litigation and to obtain the right to use USG's patents, considering it a business necessity to be able to do so. Several of the licensees had made the closed-edge board before they acquired the right to do so from USG, for which infringement of the Utzman patents they paid substantial damages. Also some of the licensees had manufactured board containing starch which was covered by the Haggerty patent. Numerous other patents included in the licenses were essential to the manufacturing of modern gypsum board.

37. Although there was discussion among the prospective licensees and with USG of the terms of the proposed licenses and of the advantages of signing them, nevertheless the decision to take a license was reached by each of the companies independently. The licensees took their respective licenses, without regard to what other companies did. Neither Griswold of American, Blagden of Beaver nor Holland of Universal acted, nor was told to act, as agent or emissary of USG or Avery in obtaining license agreements. The Avery-Blagden discussions involved the settlement of the USG-Beaver infringement litigation. Any interest by Griswold and Holland in the settlement of litigation in the industry was motivated by con-
8900 cern for their respective companies and the proposed mergers each of them was promoting.

38. The execution of the licenses on the faith of the *Bement* and *General Electric* cases, payment of royalties and damages by the licensees, insistence by USG upon the same terms for all, open negotiation and enforcement, signing by the licensees to avoid litigation and to make the better closed-edge board and upon independent decisions by the several licensees—all evidence good faith in the execution of the license agreements.

39. Exhibits 227 and 231 are Certain-teed intra-company memoranda wherein C. O. Brown, Sales Manager, made reference to negotiations for the bubble board and starch licenses, and to the patents and patent applications involved. Those exhibits do not establish bad faith in the execution of the license agreements either on the part of Certain-teed or any other person or company. The primary reason of Certain-teed in taking a license under the Haggerty starch and the Roos bubble board patents was that the method of manufacture was cheaper, the products could be made much lighter with resultant savings in transportation costs, and a better product resulted, Certain-teed carefully investigated the bubble board invention and concluded, about July 3, 1929, that it had merit and that a license should be taken. It had already investigated the starch situation and thought that it might be subject, on account of its own use of starch, to a claim of infringement of the Haggerty patent. When the opportunity to obtain a license under the starch patents as well as the bubble board invention was presented, Certain-teed was glad to take advantage of it. Certain-teed was not moti-

vated by a desire for price fixing when it determined to take the license. There was no understanding or agreement that the starch and bubble patents or the proposed licenses would be used as a vehicle to obtain price control. Whittemore, Vice-President of Certain-teed, had the final decision in respect of Certain-teed's taking the bubble board and starch patent license. The statement in his memorandum (part of Exhibit 227) to Van Hagan of the production department, "you can easily see the possibilities in this bubble patent", referred to the possibilities of production and quality advantages under that patent.

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40. The Government contended that, if Certain-teed believed that USG was attempting to dominate and monopolize the gypsum board industry and to restrain competition as averred in the unverified answer of Certain-teed filed in USG's injunction suit against it and the memorandum with respect thereto (Exhibits 324 and 212, respectively), that company must have intended to join in such an illegal purpose when it subsequently took the license. It can with at least equal, if not greater, reasonableness be inferred that Certain-teed had before signing the license reached the conclusion that its statement concerning USG's purpose in bringing the suit was erroneous and that Certain-teed therefore felt free to accept the license agreement. The exhibits are at most equivocal in meaning and do not establish bad faith in the execution of the license agreement.

41. The Government has failed to establish that the perforated lath license contracts, signed by Certain-teed, American, Ebsary and Kelley on June 8, 1936, July 10, 1936, February 2, 1937, and June 23, 1937, respectively, were made in bad faith. On the contrary, said licenses were made in good faith and were intended to bind each party to the promises made therein. They were not sham agreements executed to disguise illegal purposes.

8902

42. In many localities there is a building code requirement in the case of plaster bases that a wall structure (the base plus the applied coat of plaster) must stand a one hour fire test. USG, to meet this requirement, developed the perforated gypsum lath covered by the Roos patent, which contained perforations of such size and spacing as to permit a wall structure composed of it to

withstand the one hour test. When plaster is applied to this type of lath some of it passes through the perforations and forms a mechanical key which, because of the size and spacing of the holes, supports the coat of plaster with the result that it will resist fire for an hour. USG's perforated lath passed the one hour fire test of the United States Bureau of Standards and received the Bureau's one hour fire rating. This was the first gypsum lath ever to pass this test. The only perforated lath which ever passed the Bureau's one hour test was of the type covered by the Roos perforated lath patent.

43. Certain-teed, in taking the perforated lath license, believed it was necessary to obtain a supply of the perforated lath product in order to be competitive. It thought that the volume of business in perforated lath would be small—although in this respect the company turned out to be mistaken, as the demand in the trade became considerable. Another reason motivating the company in taking the license was a desire to avoid possible patent infringement liability. Certain-teed was acting in good faith in taking this license.

44. Newark took the perforated lath license because it desired to be competitive with the other licensees who had signed a similar agreement. Newark found it necessary to sell perforated lath, felt that it had to be in a position to produce it, and wanted to be able to do so lawfully. In taking this license Newark acted in good faith.

8903 45. There is no evidence questioning the good faith of American or Ebsary in respect of their taking perforated lath licenses.

46. The Government has failed to establish that the metallized board licenses, signed by National, Kelley, Certain-teed, Atlantic, American, Universal and Ebsary on October 5, 1934, October 12, 1934, November 2, 1934, November 30, 1934, December 4, 1934, April 4, 1935, and August 14, 1935, respectively, were signed by the various licensees without any expectation that they would manufacture such board, but with the intention that they would purchase it from USG or National and then resell it at prices and under conditions fixed by USG. On the contrary, said licenses were made in good faith by each of said licensees with the intention to manufacture such board and were intended to bind each party to the promises made

therein: They were not sham agreements executed to disguise illegal purposes.

47. When Certain-teed executed the metallized board license it intended to manufacture such board and soon thereafter did manufacture it. It had no agreement or understanding as to the price at which it would resell metallized board purchased from other companies. The amount of metallized board which Certain-teed purchased from other manufacturers was very small.

48. Atlantic considered the desirability of executing a metallized board license and favored such a license since there was an increasing demand for that type of board. When Atlantic took the license it intended to manufacture metallized board and before its business was sold to National it had started the manufacture of metallized board. Atlantic had no understanding or agreement with USG or anyone else as to the price at which it would sell metallized board purchased by it from other companies.

49. American concurred in USG's view that the
8904 board manufacturers should get behind this new insulating product, and, since insulating board had developed into a strong competitor of gypsum board, felt that it would be a good thing for the manufacturers to enter the metallized board field. American took the metallized board license with the expectation of manufacturing the product and did manufacture it after taking the license. American understood at all times that the only price fixed by USG was that of board manufactured by American under the patents licensed by USG.

50. There is no evidence questioning the good faith of Kelley and Newark in taking the metallized board license. Both companies manufactured metallized board under the license.

51. Ebsary took the metallized board license because it desired to manufacture the product under it, feeling that it was a matter of some importance to board manufacturers to be able to make a board and a lath with insulating qualities. Ebsary started to make this product early in 1936. Ebsary understood that the bulletin provisions applied only to such board as Ebsary itself made and sold. There was no understanding or agreement between USG and Ebsary that metallized board bulletin prices should be obser-

ved prior to the time Ebsary got into production of metallized board.

52. There is no evidence questioning the good faith of National or Universal on the subject of the metallized board license.

53. The prices which USG fixed under the metallized board licenses applied only to the patented metallized board manufactured and sold by the respective licensees. While some of the licensees purchased patented metallized board from other manufacturers and resold it, the resale prices of such board were not fixed by USG, nor was
8905 there any understanding or agreement that they would be.

54. The fact that for the privilege of using the patents, royalties are fixed in the license agreements at an amount equivalent to a designated percentage of the selling price of the licensees of all gypsum board manufactured by them, whether or not patented, does not establish an agreement to make only the patented product and does not establish that the license agreements were executed in bad faith. The patents were numerous and covered not only the patented board but machines and processes in the manufacture of board, and the rights and privileges granted were of great value to the manufacturers of gypsum board. This royalty provision is in effect a provision for a percentage of gross sales, and as such is but a convenient means of measuring the amount to be paid for the privilege of using the patents. It might with equal propriety have been a lump sum. This provision in the license agreements was not an attempt to impose a royalty upon an unpatented product, nor was it intended to drive open-edge board off the market, nor did it have that effect.

55. No evidence has been introduced proving or tending to prove that the board made and sold by the defendants was not made under the patents on which the license agreements were based.

56. There were no agreements between USG and the licensee companies other than those which were put into formal writing. There were no informal side agreements between USG and any of its licensees or between any of the defendants herein that they would discontinue making

open-edge board or seconds of closed-edge board, or that USG would advance and stabilize the prices for board, or that all or any of the companies would increase their prices for other gypsum products, or that USG would con-
8906 tinue to control prices through the use of other patents after expiration of the Utzman product patent in August 1929.

57. The evidence does not establish any of the Government's charges that the license agreements were non-bona fide because executed with intent to accomplish restraints of trade beyond the proper limits of the patent monopoly, specifically (1) illegally to raise and fix at arbitrary and non-competitive levels the price of gypsum board; (2) to accomplish improper standardization of gypsum board and its method of production; (3) to raise, maintain and stabilize the level of prices of unpatented materials—plaster and miscellaneous gypsum products; (4) to effectuate improper restriction upon distribution of gypsum board, plaster and miscellaneous gypsum products; or (5) to fix the prices at which manufacturing distributors resell gypsum board.

58. The licenses were not executed with an intent to fix prices of gypsum board at high levels or any given levels. There was at no time any understanding or agreement or even discussion as to what the prices of gypsum board would be upon the execution of the licenses.

59. After the execution of the licenses, the licensees had nothing whatever to do with fixing the minimum prices at which the patented products were to be sold.

60. The gypsum industry in the "Eastern area" was in a demoralized condition in the years 1927-1929. There was litigation, bad feeling, price cutting. The prices of board had fallen so low that for some manufacturers business was no longer profitable. Prices could not go down
8907 and business continue; any change would, as a matter of economic necessity, be upward.

61. The license agreements were not executed with intent to accomplish improper standardization of board and its method of production.

62. Only Texas, Certain-teed and Ebsary had made open-edge board before signing their licenses. Beaver, Universal, National, Niagara and American had made only

closed-edge or partially closed-edge board. Atlantic's commencement of manufacturing any board was coincidental with its taking a license. There was no understanding or agreement to refrain from or discontinue the manufacture and sale of open-edge board. Nothing in the license agreements forbids making and selling it.

63. Each of the companies—Texas, Certain-teed and Ebsary—which had made the open-edge board had found it unsatisfactory because it was expensive and wasteful in production and distribution and because it was not desired by their customers who were demanding the closed-edge board, with resultant loss of business to each of the manufacturers. The primary reason that each of these companies took a license was to obtain the right to make the closed-edge board and this is what they did after acquiring a license. It may be inferred that each of such licensees did not expect, once it had secured the right to make the closed-edge board, to go forward further with the manufacture and sale of the inferior article.

64. Exhibit 226, which is a Certain-teed intra-company memorandum of June 4, 1929, by George M. Brown, and Exhibit 332, which is USG's Report to Stockholders for the fiscal year ending December 31, 1929, do not establish an improper intent not to make and sell open-edge board.

8908 65. The sixth "whereas clause" in Exhibit 5 (the Ebsary agreement of May 22, 1929), is not merely a purported waiver of the condition referred to in the fifth "whereas clause". Nor is it the fact that by tacit agreement the companies understood in May 1929 that the open-edge board was to be discontinued. The testimony of Lenci, who on being shown on direct examination only the fifth "whereas clause" said that it was the understanding of everybody who took out a license that the making of the open-edge board was to be discontinued, was corrected on cross-examination when his attention was called to the sixth "whereas clause", and it is clear from his entire testimony and from other evidence in the case that there was in fact no such understanding or agreement.

66. The license agreements were not executed with an intent to eliminate open-edge board.

67. A "second" is a defective board produced unintentionally in the process of manufacturing standard board.

A No. 2 board is a board made of lower grade material than that used in the manufacturing of the standard board. Both seconds and No. 2 board are by definition board made under the patents. There was no agreement or understanding that seconds or No. 2 board would not be manufactured. On the contrary the parties to the license agreements were free at all times to make and sell such board.

68. The provision of the license agreements requiring seconds to be marked as such was not intended to eliminate seconds. It is inferred that the real purpose of this provision was to prevent harming the reputation of the standard board by the confusion of seconds with it.

69. The license agreements were not executed with an intent to eliminate either seconds or No. 2 board.

8909 70. USG's Birdsey patent No. 1,696,877 of December 25, 1928, covered a method of binding gypsum boards together with a gummed tape which ran lengthwise along the edges of the board. The May 1929 license agreements, except that with Certain-teed, granted rights under this patent and required that the licensees use this bundling method and no other. Certain-teed was first granted license agreement executed July 3, 1929. This contained the restrictive provision. The November 1929 agreements did not contain the restrictive provisions. There was no satisfactory way of bundling gypsum board or lath except by means of the Birdsey bundle. Attempts to tie the board with wire resulted in the wire slipping and cutting the board thereby causing much breakage. Delivery of board by the licensees in broken condition would tend to devalue the product and thus lessen the pecuniary reward of the patentee's monopoly and it is inferable that the restrictive provision regarding use of the bundling patent was to exploit the patent and to accomplish packaging and delivery of board by the licensees in a manner which would preserve quality, i.e., without breakage. In any event, the restrictive provision was abandoned when the November 1929 licenses were executed.

71. The provisions for royalties for the use of the USG bundling patents contained in the May 1929 licenses, the Certain-teed July 3, 1929 license, and the November 1929 licenses, do not establish an attempt to standardize by eliminating other methods of packaging. The provisions were not so intended, nor did they have such effect. No

other method was available (except, for lath, the
8910 uneconomic method of tying with wire).

72. The license agreements were not executed with an intent to standardize in respect of the bundling patents.

73. There was at no time any understanding or agreement among any of the parties to the respective license agreements that the prices would be raised or fixed upon plaster or any unpatented gypsum product. Nor were the license agreements in the instant case executed with an intent to raise, maintain and stabilize the prices of unpatented materials such as plaster and miscellaneous gypsum products. The parties to the respective license agreements knew that the licensor's right to fix minimum prices was limited to the prices on patented board manufactured and sold by the respective licensees.

74. After the signing of the May 1929 licenses, bulletins established patented board prices at the levels which USG had been following just prior to the licenses. Subsequently until August 6, 1929, and (except for Texas) after the execution of the November 1929 agreements, the prices on patented gypsum board were advanced over what they had been during the price war, and the prices of other gypsum products improved during the same period over their condition during the price war. The primary purpose of USG in granting the licenses was the settlement of litigation, the collection of damages for infringement, the obtaining of royalties, the fixing of a profitable price on patented board, and the securing of the various advantages which would normally flow from the general manufacture and sale of the superior product. The primary purpose of the licensees in the signing of the licenses was the obtaining of the right to make the superior product and the settlement or avoidance of litigation.

8911 75. The license agreements were not executed with an intent to effectuate improper restriction upon the distribution of gypsum board, plaster or miscellaneous gypsum products, specifically, to "eliminate" jobbers through the discontinuance of a sales discount.

76. A jobber is a functionary in the wholesaling process who buys from the manufacturer, or from another wholesaler who has bought from the manufacturer, and sells to the dealer. The jobber's service is that of relieving the

manufacturer, or in some instances the wholesaler, from the necessity of direct contact with the dealer—this being accomplished by the jobber's sales force. In the gypsum industry, jobbers occupy a somewhat ambiguous position, since it is difficult to know whether or not a given person is a jobber.

77. There was no agreement or understanding between any of the parties to the license agreements in the instant case whereby jobbers would be eliminated from the gypsum board distributive system. Nor was there any understanding or agreement that jobbers' discounts would be discontinued. The issuance of the bulletin of August 8, 1930 (Exhibit 430) making the price to jobbers the same as to dealers was the exercise of the right of USG to establish a price for the patented product.

78. The Kling letter of November 12, 1929 to Avery (Exhibit 181), wherein Kling asks, among other things, for Avery's approval of four named jobbers and Avery's reply of November 16, 1929 (Exhibit 182) referring him to a provision in the proposed license with American and pointing out that American would have the right to sell the patented board to jobbers, do not establish an intent to "eliminate" jobbers, but on the contrary establish an
8912 intent to continue to deal with them.

79. The bulletin of May 24, 1929 (Exhibit 408) requesting each licensee to send USG a list of the jobbers to whom it was selling patented board and the discussion concerning jobbers at the licensee meeting of June 6, 1929 do not establish an intent to eliminate jobbers or withdraw the discount. They are at best equivocal in respect of any such intent.

80. The charge in the complaint of improper restrictions upon distribution of plaster and miscellaneous gypsum products, is not established. There is no evidence concerning any dealings by USG or the licensees with jobbers in respect of plaster and miscellaneous gypsum products.

81. The license agreements in the instant case were not executed with an intent to fix the prices at which manufacturing distributors would resell gypsum board.

82. The term "manufacturing distributors" is applicable to companies which manufacture and sell gypsum plaster but which do not, for lack of investment in the large amount

of plant equipment necessary in the making of gypsum board, manufacture board. In order to be able to market a full line of products, the manufacturing distributors purchase gypsum board from USG or one or more of its licensees. The purchases are made at a discount, and the sales of the board are made to the same dealer trade as that to which USG and its licensees sell their board, and therefore are made in competition with USG and its licensees. Both the May and the November 1929 license agreements provided that a licensee might not sell patented gypsum board to manufacturing distributors
8913 without the written consent of USG. The manufacturing distributors referred to in the evidence are the Structural Gypsum Corporation, of Linden, New Jersey; the Connecticut Adamant Plaster Company, of New Haven, Connecticut; and the Oakfield Gypsum Products Corporation, of Oakfield, New York, hereinafter referred to as Structural, Connecticut Adamant, and Oakfield, respectively. No evidence was introduced concerning the other companies listed in the bill of particulars as manufacturing distributors.

83. There was no understanding or agreement of any kind that the resale prices of manufacturing distributors should be regulated or controlled. At no time was it Lenci's purpose, or that of Ebsary, as contended by the Government, to control the prices or practices of manufacturing distributors, and they at no time had any understanding or agreement with anyone to the effect that Ebsary would control or attempt to control the resale prices at which manufacturing distributors or any of them sold board purchased from Ebsary.

84. The clause of the licenses forbidding sales to manufacturing distributors without the written consent of USG was not intended to control the prices of such distributors, nor was it so used.

85. The license agreements in the instant case were not executed with intent to gain objectives beyond the proper limits of a patent monopoly.

86. The actual operations of the defendants under the license agreements were not carried beyond the proper limits of the patent monopoly and licensing thereunder, i.e., beyond the activities contemplated by the agreements as written and into the field denounced by the Sherman Act.

8914 The evidence does not establish any of the Government's charges, (1) that the price of gypsum board was illegally raised and fixed at arbitrary and non-competitive levels; (2) that improper standardization of gypsum board and its method of production was accomplished; (3) that the level of prices of unpatented materials—plaster and miscellaneous gypsum products—was raised, maintained and stabilized; (4) that improper restriction upon distribution of gypsum board, plaster and miscellaneous gypsum products was effectuated; or (5) that the prices at which manufacturing distributors resold gypsum board were fixed.

87. The defendants did not by any of their operations under the license agreements, nor did they by any agreement or understanding, illegally raise or fix at arbitrary or non-competitive levels the price of gypsum board, as charged by the Government.

88. As above found, after the signing of the May 1929 licenses, the USG bulletins established patented board prices at the levels at which USG had been selling board just prior to the execution of these licenses and subsequently these bulletin prices were advanced over what they had been during the price war. But the prices so established did not exceed those which prevailed prior to the first license (the Beaver license) and the price war. Since 1935 the prices have been lowered so that for the past several years wallboard has sold for $23 per M square feet and lath for $13, as compared with $30 and $15-$16, respectively, before the first license.

89. The defendants did not by any of their operations under the license agreements, nor did they by any agreement or understanding, accomplish any improper standardization of gypsum board or its method of production, as charged by the Government.

8915 90. Texas, Certain-teed and Ebsary, the only companies which prior to their licenses had made open-edge board, discontinued its manufacture and sale once they had acquired the right to make closed-edge board. The other licensees who had not manufactured the open-edge board did not commence its manufacture. But this was not the result of any understanding or agreement between any of the parties for the elimination of open-edge board.

91. The evidence fails to establish that there was an elimination of either seconds or No. 2 board. Every company unavoidably produces some seconds. As a company improves in the art of board manufacturing fewer and fewer seconds are produced. There is no evidence concerning elimination of No. 2 board.

92. The selling of seconds is harmful to the reputation of the perfect grade of the manufactured product. Protection by a patentee manufacturer of the quality of his product is important commercially, for if quality and reputation for quality descend, so will demand and price.

93. There is no evidence that during the period from May to November, 1929, when the restrictive provision regarding the bundling patents was in the licenses, it drove off the market any other method of packaging or that there was any other method (except, for lath, the uneconomic method of tying with wire). The use of the bundling invention, since the execution of the November 1929 licenses, has been on its merit for lack of a better one. There is no evidence that the restrictive provision will be reintroduced into the presently outstanding licenses; and it is found that its reintroduction is unlikely. There is no evidence that the elimination of this provision in November 1929 was in anticipation of the instant action, or of
8916 any other anti-trust proceeding. The question of the legality of the restrictive provision has become moot, and its presence in the May licenses is not a foundation for equitable restraint.

94. The defendants did not by any of their operations under the license agreements, nor did they by any agreement or understanding, raise, maintain or stabilize the level of prices of plaster or miscellaneous gypsum products or any other unpatented product, as charged by the Government. The increase in price of plaster and miscellaneous gypsum products over the price during the 1927-1929 price war was not the result of any device adopted or action taken by the defendants to bring about such increase.

95. The Bulletin provision that "Any sale of patented products, though ostensibly made at or above the minimum price established by licensor, will nevertheless be considered a violation of the provisions of the license if licensee directly or indirectly reduces the actual price charged by licensee below such minimum price * * * by reducing the

price of other products * * *" is but part of a larger provision concerning rebates and allowances made for the purpose and with the effect of reducing the licensee's price on patented board below the minimum price therefor—a price protective provision. It was not a device to raise, maintain or stabilize the price of plaster or miscellaneous gypsum products, and it was not applied by the defendants to that end. Nor did it have that effect. On the contrary the provision in question was a proper price protective measure reasonably designed to secure to USG the pecuniary reward of its patent monopoly. In operation, it was not used to raise, maintain or stabilize the price of unpatented materials.

8917 96. Exhibits 489 through 495, 497, 498, 500 and 501, are Ebsary and Board Survey letters involving complaints that Ebsary had violated the minimuin price on patented gypsum board through the device of rebating by giving away plaster or other products to a dealer in connection with a sale of patented board for the purpose of reducing the minimum price on the board, and do not establish that defendants or any of them raised, maintained or stabilized the prices of unpatented materials. Ebsary fully understood that USG was not attempting to fix or control Ebsary's plaster prices.

97. Exhibits 727, 729 through 738, 746 through 749, 758 and 759 are letters involving complaints that the minimum price on patented gypsum board had been violated by certain other licensees through the device of rebating by giving away plaster to a dealer in connection with a sale of the patented board, and do not establish that defendants or any of them raised, maintained or stabilized the prices of unpatented materials.

98. The Government introduced additional exhibits relating to asserted violations of the ininimum price on the patented board by means of gifts of, or rebates upon, roofing products, paints, insulation board, building paper and fibre board, or by means of such devices as free painting of signs, sales of company stock below the market price, donations to a ball club or receiving payment for board in certificates of deposit, rather than in legal tender. The purpose of these investigations disclosed by these exhibits was the same as in the case of the investigations relating to asserted gifts of, or rebates upon, plaster—namely, to

prevent the licensee involved from violating its license contract by selling the patented board manufactured by it at a price below the minimum price therefor established by the licensor. The items referred to in these ex-
8918 hibits are not embraced within the charge of the complaint.

99. The defendants did not by any of their operations under the license agreements, nor did they by any agreement or understanding, effectuate any improper restriction upon distribution of gypsum board, plaster or miscellaneous gypsum products, as charged by the Government.

100. As found above, USG, on August 8, 1930, by a bulletin (Exhibit 430) made the minimum price at which a licensee could sell its patented board to jobbers the same as the minimum price to the regular dealer trade. While thereafter a jobber who purchased patented board from either USG or one of its licensees was obliged to pay the same price as a dealer, the discontinuance of the discount did not have the effect of forbidding sales of board to jobbers if they were willing to buy at the dealer price. Many jobbers continued to buy board and were able to perform a proper jobber's function. There were small dealers who, for financial reasons or lack of warehouse space, were not able to buy or store board in the minimum quantities in which the licensees were required by the bulletins to sell it. A jobber financially able to purchase a substantial amount of board and having adequate warehouse space could, though he purchased at the dealer price, resell in small lots to such dealers at an advance, because of the service he thus rendered them.

101. The discontinuance of the jobber discount was not accomplished pursuant to any understanding or agreement among defendants or any of them.

102. Exhibits 438, 471 and 502, which are communications of Ebsary to Board Survey and USG, do not establish concerted action to "eliminate" jobbers. Such ex-
8919 hibits were complaints that particular licensees had made arrangements with jobbers or dealers to give discounts or lower prices on patented board in violation of the minimum price bulletins.

103. No evidence was introduced in support of the charge that the defendants effectuated any restriction upon

distribution of plaster and miscellaneous gypsum products through jobbers. Both the bulletin establishing the jobber discount and the bulletin making the price to jobbers and dealers the same applied only to patented board.

104. The defendants did not by any of their operations under the license agreements, nor did they by any agreement or understanding, fix the prices at which manufacturing distributors resold gypsum board, as charged by the Government.

105. The evidence does not establish any of the Government's charges that the resale prices of manufacturing distributors were controlled by (a) the use by USG of the provision in the May and November 1929 licenses requiring USG's written consent to the sale by licensees of patented board to manufacturing distributors, (b) the supplying to manufacturing distributors by their licensee sellers of the bulletin dealer prices on board, (c) the policing of manufacturing distributors sales of board, and (d) the limiting of the manufacturing distributor discount to approximately the cost of handling the board.

106. USG freely, and without conditions attached, granted consents to the licensees to sell board to manufacturing distributors. No consent once granted was ever withdrawn. The consents were never used by USG to control or attempt to control in any way the resale price of any of the manufacturing distributors.

8920 107. So far as the manufacturing distributors themselves were concerned, the consents to sell, which had been given by USG to their respective suppliers, were not subject to be withdrawn in the event that the distributors did not resell gypsum board at given prices and no threats of withdrawal of consents to their suppliers were ever made to any of them.

108. None of the manufacturing distributors had any agreement with its supplier to resell board at any particular price or prices. The furnishing by the licensees of information with respect to their dealer prices to the manufacturing distributors was to enable the distributors to determine their own net cost of the board, and not for the purpose of controlling the manufacturing distributors' resale prices. The discount allowed to the manufacturing distributors was 12-1/2% (on lath) and 15% (on wallboard) off the dealer price, and this was the basis on

which the manufacturing distributors were normally quoted.

109. No one from the board manufacturing companies or Board Survey ever investigated any manufacturing distributor with respect to its resale prices; and no one from USG or any other board manufacturer ever threatened to stop selling board to a manufacturing distributor on account of prices it charged on resales.

110. There were no contractual or coercive arrangements by which manufacturing distributors were compelled to resell board either at prices fixed by USG or at any other price.

111. There was no investigation and regulation of the resale prices of manufacturing distributors on gypsum board.

8921 112. Exhibits 463 and 464 do not establish policing by Board Survey of Connecticut Adamant's resale price on board. The "policing" was not of Connecticut Adamant's resale price but of Ebsary's price to Connecticut Adamant.

113. Exhibits 512, 513 A and 514 and related evidence involve a complaint against the licensee Kelley rather than against the manufacturing distributor Oakfield. The situation was one in which a complaining licensee inferred from the activities of the accused licensee's customer, the manufacturing distributor, that the accused licensee was violating the license bulletins. Again the investigation was not of the resale price of the manufacturing distributor but of the discount allowed by the seller licensee.

114. Exhibit 438 and related evidence present a situation wherein a complaint was made of an apparent license violation by Kelley and not of the resale price by Structural.

115. Exhibits 436 through 447, 449 and 450 and related evidence involve complaints against apparent license violations by Kelley rather than a protest against Structural or its prices or practices.

116. The evidence fails to establish any control of or attempt to control the manufacturing distributors' resale prices on board by "policing" such resale prices. All that the evidence establishes is that one licensee was insisting

to USG that a competitor-licensee was apparently violating, and should be required to abide by, the minimum price provisions of the bulletins. The protest of the complaining licensee was natural and stemmed from the "most favored nation" clause in each of the licenses for, if one li-
8922 censee was permitted by USG to sell board on more favorable terms than another, the license of the former was in effect being rewritten.

117. As above found, USG fixed the price at which the licensees might sell patented wallboard and lath to manufacturing distributors at 15% and 12-1/2%, respectively, off the minimum price to dealers. The fixing of this discount did not result in any unlawful control of the resale prices of manufacturing distributors.

118. The evidence (including certain evidence specially relied on by the Government consisting in the large of intra and inter-company correspondence and memoranda relating to the terms upon which USG was offering to settle litigation and extend licenses and the advantages and disadvantages of taking licenses—Exhibits 104, 123, 124, 132, 136b, 157, 158, 185, 189, 198, 204, 205, 206 and 716—the admission in paragraph 7 of the answer of Ebsary and the testimony of Griswold, Blagden, Holland and Lenci) fails to establish that defendants associated themselves in a plan to blanket the industry under patent licenses and stabilize prices, as charged by the Government. On the contrary, there was no such plan or enterprise to blanket the gypsum industry with patent licenses and stabilize prices.

Conclusions of Law

1. This Court has jurisdiction of this cause.

2. A patentee may divide his patent monopoly by licensing the right to make, use and sell the patented
8923 product and may fix the terms and conditions, including the price, under which the patented product shall be sold, provided the terms and conditions of sale are normally and reasonably adapted to secure the pecuniary reward of the patentee's monopoly.

3. No legal distinction can properly be drawn between the instant case and the *General Electric* case (272 U.S. 476).

4. None of the defendants was a party to any contract, combination in the form of trust or otherwise, or conspir-

acy, in restraint of trade or commerce among the several states in gypsum products in violation of Section 1 of the Sherman Anti-Trust Act.

5. None of the defendants monopolized or attempted to monopolize, or combined or conspired with any other person or persons, to monopolize any part of the trade or commerce among the several states in gypsum products in violation of Section 2 of the Sherman Anti-Trust Act.

6. None of the defendants was a party to any contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce in gypsum products in the District of Columbia, or in restraint of trade or commerce in gypsum products between any state or states or the District of Columbia, or between the District of Columbia and any state or states, in violation of Section 3 of the Sherman Anti-Trust Act.

7. The license agreements were executed in good faith and said agreements, and the activities of defendants and their agents thereunder, were lawful and proper and within the limits of the licensor's patent monopoly.

8924 8. Upon the facts and the law, the plaintiff has shown no right to relief.

9. Defendants and each of them are entitled to judgment dismissing the complaint upon the merits.

Dated August 5, 1946.

HAROLD M. STEPHENS.
FINIS J. GARRETT.
JOSEPH R. JACKSON.

8925 IN

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF COLUMBIA

Civil Action No. 8017

UNITED STATES OF AMERICA, *plaintiff*

v.

UNITED STATES GYPSUM COMPANY, *et al., defendants*

[File endorsement omitted.]

Final judgment

Filed Aug. 5, 1946

This cause having come on for trial, and the plaintiff having completed its presentation of evidence, and the Court having made and filed its Findings of Fact and Conclusions of Law,

IT IS HEREBY ADJUDGED AND DECREED that the complaint as amended herein be, and the same hereby is, dismissed on the merits.

Dated August 5, 1946.

HAROLD M. STEPHENS.
FINIS J. GARRETT.
JOSEPH R. JACKSON.

Now July 15 1946 Service of the within is acknowledged.

EDWARD KNUFF,
Sp. Asst. to Atty. Gen.

8926 In District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Order correcting opinion of June 15, 1946, on motions to strike certain exhibits and testimony received subject to connection and to dismiss the Government's complaint with prejudice under Rule 41 (b) of the Federal Rules of Civil Procedure

Filed Sept. 4, 1946

It is hereby ordered that the following corrections be made in the opinion of the court of June 15, 1946:

Cover page. 3rd paragraph, 2nd line. After the word "Garrett" insert the following, "Presiding Judge," and delete the letter "s" from the word "Judges" which follows the word "Jackson,". As corrected the second line of this paragraph will read: "for the District of Columbia (Presiding), and Garrett, Presiding Judge, and Jackson, Judge, United".

Page 3. 22nd line. Change the word "stated" to the word "recited".

Page 4. 27th line. Insert a comma after the word "injunction".

Page 7. 16th line. Change the footnote number "7a" to "8" and in the footnote change "7a" to "8".

Page 8. 7th line. Change the footnote number "7b" to "9" and in the footnote change "7b" to "9".

Page 9. 14th line. Change the footnote number "8" to "10" and in the footnote change "8" to "10". 15th line. Change the footnote number "9" to "11" and in the footnote change "9" to "11". 22nd line. Change the words "the licensees" to the word "them".

Page 10. 5th line. Change the footnote number "9a" to "12" and in the footnote change "9a" to "12". 11th line. Change the word "regulated" to the word "calculated". 12th line. Delete the words "of any patent":

13th line. Delete the word "licensee". 27th line. After the words "below the" insert the word "licensee's". 28th line. Change the footnote number "10" to "13" and in the footnote change "10" to "13".

Page 11. 2nd line. Change the word "they" to the words "each licensee". Change the word "them" to the word "it". In the footnote. Change the number "10" to "13".

8927 Page 12. 13th line. Change the word "most" to the words "a substantial part". 43rd line. Change the footnote number "11" to "14" and in the footnote change "11" to "14".

Page 13. 53rd line. Lower case the letter "P" in the words "President" in this line. 54th line. Lower case the letters "V" and "P" in the words "Vice-President". 63rd line. Lower case the letter "P" in the word "President".

Page 14. 34th line. Change the footnote number "11a" to "15" and in the footnote change "11a" to "15".

Page 16. 48th line. Change the footnote number "12" to "16" and in the footnote change "12" to "16". 50th line. Change the footnote number "13" to "17" and in the footnote change "13" to "17".

Page 18. 19th line (following the heading). Change the footnote number "14" to "18" and in the footnote change "14" to "18".

Page 20. 33rd line. Insert a paragraph sign before the words "The Government attacks". 45th line. Change the period following the word "Wilson" to a comma and insert the word "supra".

Page 22. 1st line. Change the word "inescapable" to the word "unavoidable".

Page 26. 17th line. Delete the hyphen following the word "non".

Page 27. 2nd line. Change the footnote number "15" to "19" and in the footnote change "15" to "19".

Page 30. 25th line. Change the footnote number "16" to "20" and in the footnote change "16" to "20".

Page 31. 14th line. Change the words "The restrictions were" to the words "It was". Change the words "be

justified" to the words "justify the restrictions". 15th line. Change the words "It was" to the words "The court". In the footnote. Change the number "16" to "20".

Page 32. 45th line. Change the footnote number "17" to "21" and in the footnote change "17" to "21".

Page 34. 29th line. After the word "merely" insert the word "for". 32nd line. Change the word "by" to the word "covered". After the word "improvements" insert the word "which".

Page 35. 16th line. Change the footnote number "18" to "22" and in the footnote change "18" to "22". 24th line. Change the word "fundamental" to the word "important".

Page 36. 17th line. Change the word "upon" to the word "in".

Page 37. 34th line. After the word "which" insert the words "normally and". 35th line. Delete the words "to the patentee". Delete the word "normal".

8928 Page 38. 25th line. After the word "were" insert the words "normally and". 26th line. Delete the word "normal".

Page 39. 10th line. Change the footnote number "19" to "23" and in the footnote change "19" to "23". 30th line. Change the footnote number "20" to "24" and in the footnote change "20" to "24".

Page 40. 16th line. Change the footnote number "21" to "25" and in the footnote change "21" to "25".

Page 41. In the footnote. Change the number "21" to "25".

Page 42. In the footnote. Change the number "21" to "25".

Page 43. 11th line. Change the footnote number "22" to "26" and in the footnote change "22" to "26". In the footnote "21—continued". Change the number "21" to "25".

Page 44. 13th line. Change the footnote number "23" to "27" and in the footnote change "23" to "27".

Page 45. 11th line. Change the figure "23" to "27".

Page 46. 6th line. Change the footnote number "24" to "28" and in the footnote change "24" to "28".

Page 47. 11th line. Change the word "and" following the word "on," to the word "or".

Page 48. 2nd line from bottom of page. Delete the comma following the words "if it then".

Page 49. 12th line (following break in text). Change the word "were" to the word "are". 13th line (following break in text). Change the word "were" to the word "are". After the word "and" insert the word "were".

Page 51. 8th line. Change the footnote number "25" to "29" and in the footnote change "25" to "29". 12th line. Change the footnote number "26" to "30" and in the footnote change "26" to "30".

Page 52. 31st line. Delete the word "again".

Page 53. 5th line. Delete the words "each of".

Page 58. 63rd line. Change the footnote number "27" to "31" and in the footnote change "27" to "31".

Page 59. 14th line. Change the word "under" to the words "confronted with". 26th line. Change the footnote number "28" to "32" and in the footnote change "28" to "32". 7th line of footnote. Change the word "attained" to the word "secured".

Page 60. In the footnote. Change the number "28" to "32".

Page 67. 11th line. Change the footnote number "29" to "33" and in the footnote change "29" to "33".

Page 69. 1st line of double spaced material. Change the word "with" to the word "by".

8929 Page 70. 1st line. Change the footnote number "30" to "34" and in the footnote change "30" to "34".

Page 73. 27th line (following heading). Change the footnote number "31" to "35" and in the footnote change "31" to "35".

Page 81. 7th line. Change the footnote number "32" to "36" and in the footnote change "32" to "36".

Page 87. 24th line. Change the footnote number "33" to "37" and in the footnote change "33" to "37".

Page 91. 8th line. Change the word "and" to the word "or".

Page 94. 11th line. Change the word "states" to the word "recites".

Page 96. 29th line. Change the words "each other" to the words "one another".

Page 97. Last line of text. Change the footnote number "34" to "38" and in the footnote change "34" to "38".

Page 98. In the footnote. Change the number "34" to "38".

Page 99. 10th line. Change the footnote number "35" to "39" and in the footnote change "35" to "39". Last line of text. Change the footnote number "36" to "40" and in the footnote change "36" to "40".

Page 100. 9th line. Change the footnote number "37" to "41" and in the footnote change "37" to "41". 24th line. Change the footnote number "38" to "42" and in the footnote change "38" to "42".

Page 102. 25th line. Change the footnote number "39" to "43" and in the footnote change "39" to "43". 33rd line. Change the footnote number "40" to "44" and in the footnote change "40" to "44".

Page 103. 2nd line. Change the footnote number "41" to "45" and in the footnote change "41" to "45".

Page 107. 1st line. After the word "Fairmount" insert the following "[sic]". 33rd line. Delete the words "not bona fide". 34th line. Delete the word "because". Change the period following the word "jobbers" to a comma and insert the words "and that they were for that reason not bona fide".

Page 108. 10th line. Change the footnote number "42" to "46" and in the footnote change "42" to "46".

Page 110. 9th line. Change the word "was" to the words "has been". 11th line. Change the first "was" to the words "has been". Change the second "was" to the word "is". 31st line. After the word "license" insert the following "(the Beaver license)".

Page 112. 5th line. Change the footnote number "43" to "47" and in the footnote change "43" to "47". 18th line.

Change the footnote number "44" to "48" and in the footnote change "44" to "48".

8930 Page 116. 1st line. Change the footnote number "45" to "49" and in the footnote change "45" to "49". 11th line. Change the footnote number "46" to "50" and in the footnote change "46" to "50".

Page 120. 8th line. Delete the comma after the word "jobbers". Delete the comma after the word "dealers".

Page 122. 18th line. Change the footnote number "47" to "51" and in the footnote change "47" to "51". 27th line. Add the letter "s" to the word "bulletin".

Page 123. 14th line. Delete the words "the withdrawal of the discount, even if there had been an agreement". 15th line. Change the words "between USG and the licensees to do so, is legitimatized by" to the words "in view of". 16th line. Delete the period following the word "decision" and insert the words "not only was withdrawal of the discount legitimate but also its withdrawal by agreement, had there been such an agreement, would not have been unlawful." As corrected the sentence commencing in line 13 will read "In the instant case, as above demonstrated, in view of the patent law and the General Electric decision not only was withdrawal of the discount legitimate but also its withdrawal by agreement, had there been such an agreement, would not have been unlawful."

Page 124. 13th line. Change the footnote number "48" to "52", and in the footnote change "48" to "52".

Page 127. 20th line. Add the letter "d" to the word "manufacture".

Page 128. Last line of text. Change the footnote number "49" to "53" and in the footnote change "49" to "53".

Page 130. 4th line. Change the footnote number "50" to "54" and in the footnote change "50" to "54".

Page 134. 17th line. Change the footnote number "51" to "55" and in the footnote change "51" to "55".

Page 135. 10th line. After the word "had" insert the word "had".

Page 136. Last line of text. Change the footnote number "52" to "56" and in the footnote change "52" to "56".

Page 137. In the footnote. Change the number "52" to "56".

Page 138. 20th line. Change the footnote number "53" to "57" and in the footnote change "53" to "57".

Page 145. 11th line. Change the word "recitation" to the word "recital".

Page 150. 10th line. Change the word "This" to the word "The".

Page 151. 1st line. Change the footnote number "54" to "58" and in the footnote change "54" to "58". Change the footnote number "55" to "59" and in the footnote change "55" to "59". Change the footnote number "56" to "60" and in the footnote change "56" to "60". 40th line. Change the word "which" to the word "that".

8931 Page 155. 8th line. Before the word "copy" insert the word "either".

By the court this 21st day of August, 1946.

Harold M. Stephens.
HAROLD M. STEPHENS.

Finis J. Garrett.
FINIS J. GARRETT.

Joseph R. Jackson.
JOSEPH R. JACKSON.

8932 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Order correcting opinion of June 15, 1946, on motions to strike certain exhibits and testimony received subject to connection and to dismiss the Government's complaint with prejudice under Rule 41 (b) of the Federal Rules of Civil Procedure

Filed Sept. 24, 1946

It is hereby ordered that the following corrections be made in the opinion of the court of June 15, 1946:

Page 2. 29th line. Change the comma after the date "1921)" to a period and delete the reference "cert. denied, 263 U. S. 713 (1923)".

Page 38. 8th line. Change the letter "w" to the letter "u" in the name "Lawrence".

By the court this 24th day of September, 1946.

Harold M. Stephens.
HAROLD M. STEPHENS.

Finis J. Garrett.
FINIS J. GARRETT.

Joseph R. Jackson,
JOSEPH R. JACKSON.

8933 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Assignment of errors and prayer for reversal

Filed Sept. 30, 1946

The United States of America, plaintiff in the above-entitled cause, in connection with its petition for appeal to the Supreme Court of the United States, hereby assigns error to the record and proceedings and the entry of the final decree in the district court on August 5, 1946, in the above-entitled cause, and says that in the entry of the final decree the district court committed error to the prejudice of the plaintiff in the following particulars:

1. The court erred in its ruling, made in advance of trial, that the plaintiff was not entitled to show the invalidity of any of defendants' patents and that the court had no authority in the present proceeding to pass on the validity of defendants' patents.

2. The court erred in entering its order of November 15, 1943, granting defendants' motion for partial judgment and dismissing paragraph 46(a) of the complaint as amended, except the first and last sentences of said paragraph.

3. The court erred (1) in holding that the plaintiff conceded at the oral argument that the Government is seeking a judicial determination that the Patent Office erred in issuing the patents mentioned in paragraph 46(a) of the complaint and (2) in denying plaintiff's motion that the court modify its opinion in this respect.

8934 4. The court erred in holding that, in so far as the present suit attacks the validity of any of defendants' patents, the distinction between this suit and an independent proceeding by the Government for cancellation of such patents is not substantial.

5. The court erred in holding that where the Government brings a proceeding under the Sherman Act charging an illegal price-fixing conspiracy, it may not show the fact of patent invalidity in order to show the illegality of the defendants' conspiracy.

6. The court erred in holding that in a proceeding brought by the Government under the Sherman Act in

which the validity of certain of defendants' patents is pertinent to the issues in such proceeding, the Government is estopped to show the invalidity of these patents.

7. The court erred in ruling at the trial that where one of the defendants had admitted, under Rule 36 of the Rules of Civil Procedure, the genuineness of a document written by him, the admission of genuineness bound only such defendant, and a declaration in furtherance of the conspiracy contained in the document bound only such defendant even though the conspiracy has been established aliunde.

8. The court erred in holding that on a motion to dismiss at the close of plaintiff's case in a nonjury action under Rule 41(b) of the Federal Rules of Civil Procedure, it is the duty of the court to weigh the evidence, draw inferences therefrom, and, if it finds the evidence insufficient to make out a case for the plaintiff, to render a decision for the defendant on the merits.

9. The court erred in holding that on the defendants' motion to dismiss pursuant to Rule 41(b), every factual issue as to which the evidence before the court did not preponderate in favor of the plaintiff must be resolved against the plaintiff.

10. The court erred in holding that Rule 52(a) of the Rules of Civil Procedure required the court to make findings of fact upon the granting of defendants' motion to dismiss.

8935 11. The court erred in making any findings of fact in the present case.

12. The court erred in holding that defendants' patent license contracts are indistinguishable from the patent licensing agreement ruled upon in *United States* v. *General Electric Co.*, 272 U. S. 476, and that said contracts, including their price provisions, are lawful.

13. The court erred in holding that there is no dispute about the nature of the principal patents upon which the license agreements were founded.

14. The court erred in holding that the defendants did not have the burden of establishing that their price fixing was justified by their patent rights and that the plaintiff had the burden of establishing the contrary.

15. The court erred in holding that the affirmative allegations made in defendants' answers concerning their pat-

ent rights do not constitute pleas in confession and avoidance as matters of defense, but may be treated as surplusage, or as denials in affirmative form, or as assertions in aid of denials.

16. The court erred in holding that there was no evidence, outside the declarations of alleged conspirators, to establish any of the charges of illegal conduct made in the complaint.

17. The court erred in making its examination of the evidence upon the basis that each declaration of a defendant was binding only upon the declarant.

18. The court erred in holding that the defendants, in their actual operations under the license agreements, did not exceed the proper limits of rights given by patent law.

19. The court erred in holding that even if the declarations of alleged coconspirators are considered as binding on all the defendants, the evidence fails to establish that the defendants illegally conspired to restrain, or that they illegally conspired to monopolize, interstate commerce in gypsum board and gypsum products.

8936 20. The court erred in finding that Roos patent applications, ultimately issued as patents Nos. 2,017,022, 2,079,338, and 2,080,009, covered cellular core gypsum board produced by the employment of foam or a foaming agent in the core of the board to produce a multitude of cells or voids (Finding 11).

21. The court erred in finding that the court ruled in *Universal Gypsum & Lime Co.* v. *Haggerty,* 21 F. 2d 544, that the Haggerty patent (No. 1,500,452) was valid (Finding 12).

22. The court erred in finding that the Haggerty patent solved the "peeler" trouble in the gypsum board industry and made possible modern high-speed production of gypsum board (Findings 12 and 24).

23. The court erred in finding that Roos patent No. 1,914,345 covered the use of metallic foil as a thermal insulating element in board and that this patent covered a board having a metallized surface (Finding 16).

24. The court erred in finding that Roos patent No. 1,938,354 covered a fire-resistant plasterboard having holes punched through it at designated intervals (Finding 17).

25. The court erred in finding that U. S. G. offered a revised perforated lath license to its licensees at no additional royalty (Finding 17).

26. The court erred in finding that the price on board in U.S.G.'s price bulletins was calculated on the basis of a mill price plus freight from the nearest mill (freight-wise) to the point of destination (Finding 18).

27. The court erred in finding that the Utzman (No. 1,034,746), Haggerty (No. 1,500,452) and Roos (Nos. 2,017,-022; 2,079,338 and 2,080,009) patents were product patents upon the entire product and that they covered fundamental developments in the gypsum board industry (Finding 24.)

8937 28. The court erred in finding that when the closed-edge board of the Utzman patent came into the market the open-edge board was largely displaced under the demand of the trade for the better product (Finding 24).

29. The court erred in finding that there is no substantial distinction between the present case and the *General Electric* case (272 U. S. 476) in respect of either the importance of the patented improvements within the respective license agreements; that the patents are of similar character and bear a similar relationship to the respective industries; and that the patents principally involved in the present case cover the patented product just as completely as did the principal patents in the *General Electric* case (Finding 25).

30. The court erred in finding that the so-called price protective provisions of U.S.G.'s price bulletins related only to the minimum prices established on the patented product and were designed solely to protect such prices (Finding 26).

31. The court erred in finding that the terms and conditions of the license agreements and price bulletins in the instant case as compared with the terms and conditions, including price provisions, in the *General Electric* case (272 U. S. 476), disclose no material distinction, and that the provisions of the licenses (*sic*) in the *General Electric* case and the licenses in this case in respect to indirect price cutting are of similar character (Finding 27).

32. The court erred in finding that the provisions of all the license agreements and the operations thereunder,

including U.S.G.'s price bulletins, are reasonably and normally adapted to secure to U.S.G. the pecuniary reward for its patents and do not go beyond the limits of the monopoly granted by the patent laws (Finding 28).

8938 33. The court erred in finding that the license agreements were not executed to disguise illegal purposes (Finding 29 and 30).

34. The court erred in finding that the enforcement of the license agreements by U.S.G., the formation by U.S.G. of Board Survey, and its activities to bring about compliance by all the licensees, and the meetings between U.S.G. and its licensees, affirmatively evidence good faith (Finding 35).

35. The court erred in finding that the companies which became licensees did so because they desired to settle or avoid litigation and to obtain the right to use U.S.G.'s patents, considering it a business necessity to be able to do so; that some of the licensees had manufactured board containing starch which was covered by the Haggerty patent; and that numerous other patents included in the licenses were essential to the manufacturing of modern gypsum board (Finding 36).

36. The court erred in finding that the decision to take a license was reached by each company independently and that the licensees took their respective licenses without regard to what other companies did (Finding 37).

37. The court erred in finding that Exhibits 227 and 231 do not establish bad faith on the part of Certain-teed in the execution of the license agreements, that Certain-teed was not motivated by a desire for price fixing when it determined to take the license, and that there was no understanding or agreement that the starch and bubble patents or the proposed licenses would be used as a vehicle to obtain price control (Finding 39).

38. The court erred in finding that Exhibit 324 and 212 are equivocal in meaning and do not establish bad faith in the execution of the license agreement (Finding 40).

39. The court erred in finding that Certain-teed acted in good faith in taking the perforated lath license agreement (Finding 43).

8939 40. The court erred in finding that while some of the licensees purchased patented metallized board

from other manufacturers and resold it, the resale prices of such board were not fixed by U.S.G., nor was there any understanding or agreement that they would be (Finding 53).

41. The court erred in finding that the fixing of royalties in the license agreements at an amount equivalent to a designated percentage of the licensees' selling price of all gypsum board manufactured by them, whether patented or not, was not intended to drive open-edge board off the market and did not have that effect (Finding 54).

42. The court erred in finding that there were no agreements between U.S.G. and the licensee companies other than those which were put into formal writing and that there were no informal side agreements between U.S.G. and any of the defendants that they would discontinue making open-edge board or seconds of closed-edge board, or that U.S.G. would advance and stabilize the prices for board, or that all or any of the companies would increase their prices for other gypsum products, or that U.S.G. would continue to control prices through the use of other patents after the expiration of the Utzman product patent in August 1929 (Finding 56).

43. The court erred in finding that the evidence does not establish that the license agreements were executed with intent to accomplish restraints beyond the limits of the patent monopoly (Finding 57).

44. The court erred in finding that the license agreements were not executed with an intent to fix prices of board at high levels or any given level and that there was at no time any understanding or agreement or even discussion as to what the prices of gypsum board would be upon the execution of the licenses (Finding 58).

45. The court erred in finding that after the execution of the licenses, the licensees had nothing whatever to do with fixing the minimum prices at which the patented products were to be sold (Finding 59).

8940 46. The court erred in finding that the license agreements were not executed with intent to accomplish improper standardization of board and its method of

production or with intent not to make and sell open-edge board or to eliminate it from the market (Findings 61, 64, and 66).

47. The court erred in finding that there was no agreement or understanding that seconds or No. 2 board would not be manufactured, and that the license agreements were not executed with intent to eliminate either seconds or No. 2 board (Findings 67 and 69).

48. The court erred in finding that the provisions for royalty for use of the U.S.G. bundling patents contained in the May 1929 licenses, the Certain-teed July 3, 1929 license, and the November 1929 licenses, do not establish an attempt to standardize by eliminating other methods of packaging, and that the provisions were not so intended and did not have such effect, and that no other method (except an uneconomic one) was available (Findings 71, 72 and 93).

49. The Court erred in finding that there was at no time an understanding or agreement among any of the parties to the respective license agreements that the prices would be raised or fixed upon plaster or any unpatented gypsum product and that the license agreements were not executed with an intent to raise, maintain and stabilize the prices of unpatented materials (Finding 73).

50. The court erred in finding that the primary purpose of the licensees was the obtaining of the right to make a superior product and the settlement or avoidance of litigation, and that the primary purpose of U.S.G. was settlement of litigation, collection of damages for infringement, obtaining royalties, and securing the various advantages which would normally flow from the general manufacture and sale of a superior product (Finding 74).

8941 51. The court erred in finding that the license agreements were not executed with intent to effectuate improper restriction upon the distribution of gypsum board or gypsum products by eliminating jobbers through discontinuance of a sales discount (Finding 75).

52. The court erred in finding that there was no agreement or understanding between any of the parties to eliminate jobbers from the distributive system; that there was no understanding or agreement that jobbers' discounts

would be discontinued; that the issuance of the bulletin of August 8, 1930, was the exercise of the right of U.S.G. to establish a price for the patented product; and that after the issuance of this bulletin many jobbers continued to buy board and were able to perform a proper jobber's function (Findings 77, 100, 101 and 102).

53. The court erred in finding that the charge in the complaint of improper restrictions upon distribution of plaster and miscellaneous gypsum products is not established, and that there is no evidence concerning any dealings by U.S.G. or the licensees with jobbers in respect of plaster and miscellaneous gypsum products (Finding 80).

54. The court erred in finding that the license agreements were not executed with an intent to fix or control the prices at which manufacturing distributors would resell gypsum board, and that the defendants did not by any of their operations under the license agreements, or by any agreement or understanding, fix or control the resale prices of gypsum board or attempt so to do (Finding 81, 83, 84, 104, 105, 106, 107, 109, 110, 116 and 117).

55. The court erred in finding that the license agreements were bona fide and were not executed with intent to gain objectives beyond the proper limits of the patent monopoly, and that the operations under the license agreements were not carried beyond the proper limits of the patent monopoly (Findings 85 and 86).

8942 56. The court erred in finding that the defendants did not, by their operations under the license agreements or by any agreement or understanding, illegally raise, maintain, or fix at noncompetitive levels, the price of gypsum board, gypsum products, or other unpatented materials, or accomplish any improper standardization of gypsum board or its method of production (Finding 87, 89, 94, 95, 96, 97 and 99).

57. The court erred in finding that elimination of open-edge board was not the result of any understanding or agreement between the parties and that the evidence fails to establish that there was an elimination of seconds (Findings 90 and 91).

58. The court erred in finding that the defendants did not associate themselves in a plan to blanket the industry under patent licenses and stabilize prices (Finding 118).

59. The court erred in concluding that a patentee may divide his patent monopoly by licensing the right to make, use and sell the patented product and may fix the terms and conditions, including the price, under which the patented product shall be sold, providing the terms and conditions of sale are normally and reasonably adapted to secure the pecuniary reward of the patentee's monopoly (Conc. 2).

60. The court erred in concluding that no legal distinction can properly be drawn between the present case and the *General Electric* case (Conc. 3).

61. The court erred in concluding that none of the defendants was a party to any contract, combination or conspiracy in illegal restraint of interstate commerce in gypsum products (Conc. 4).

62. The court erred in concluding that none of the defendants monopolized, or attempted to monopolize, or combined or conspired to monopolize, any part of interstate commerce in gypsum products (Conc. 5).

63. The court erred in concluding that the license agreements were executed in good faith and that the activities thereunder of defendants and their agents were lawful and proper and within the limits of the licensor's patent monopoly (Conc. 7).

8943

64. The court erred in concluding that upon the facts and the law, the plaintiff had shown no right to relief (Conc. 8).

65. The court erred in not denying the defendants' motion to dismiss the complaint.

66. The court erred in entering judgment dismissing the complaint.

Wherefore, plaintiff prays that the final decree of the district court may be reversed to the extent that it is inconsistent with the errors herein assigned by the plaintiff, and for such other and fit relief as the court may deem just and proper.

Roscoe T. Steffen
ROSCOE T. STEFFEN,

Edward Knuff
EDWARD KNUFF,
Special Assistants to the Attorney General.

This 30th day of September 1946.

8944 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Petition for appeal

Filed Sept. 30, 1946

The United States of America, plaintiff in the above-entitled cause, considering itself aggrieved by the final judgment and decree of this Court entered on the 5th day of August 1946, does hereby pray an appeal from said final judgment and decree to the Supreme Court of the United States. Pursuant to Rule 12 of the Rules of the Supreme Court, the plaintiff presents to this Court herewith a statement showing the basis of jurisdiction of the Supreme Court to entertain an appeal in this cause.

The particulars wherein the plaintiff considers the judgment erroneous are set forth in the Assignment of Errors and Prayer for Reversal accompanying this petition and to which reference is hereby made.

Plaintiff prays that its appeal may be allowed and that a citation be issued as provided by law, that a transcript of the record, proceedings, and documents upon which said final judgment and decree was based, duly authenticated,

8945 be sent to the Supreme Court of the United States under the rules of said Court in such cases made and provided.

Wendell Berge
WENDELL BERGE,
Assistant Attorney General.

Roscoe T. Steffen
ROSCOE T. STEFFEN,
Special Assistant to the Attorney General.

Edward Knuff
EDWARD KNUFF,
Special Assistant to the Attorney General.

This 30th day of September 1946

9144 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Order allowing appeal

Filed Sept. 30, 1946

In the above-entitled cause the United States of America plaintiff, having made and filed its petition praying an appeal to the Supreme Court of the United States from the final judgment and decree of this Court in this cause entered on the 5th day of August, 1946, and having also made and filed its Assignment of Errors and Prayer for Reversal, and Statement of Jurisdiction, and having in all respects conformed to the statutes and rules in such cases made and provided.

It is therefore ordered and adjudged

That the appeal be and the same is hereby allowed as prayed for.

Harold M. Stephens,
HAROLD M. STEPHENS,

Finis J. Garrett,
FINIS J. GARRETT,

Joseph R. Jackson,
JOSEPH R. JACKSON,

Designated as Justices of the District Court of the United States for the District of Columbia.

This 30th day of September 1946.

9145 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Citation

Filed Sept. 30, 1946

To United States Gypsum Company; National Gypsum Company; Certain-teed Products Corporation; The Celotex Corporation; Ebsary Gypsum Company, Inc.; Newark Plaster Company; Samuel M. Gloyd, Doing Business Under the Name of Texas Cement Plaster Company; Sewell L. Avery; Oliver M. Knode; Melvin H. Baker; Henry J. Hartley; Frederick G. Ebsary; and Frederick Tomkins.

You are hereby cited and admonished to be and appear at the Supreme Court of the United States in Washington within forty (40) days from the date hereof, pursuant to an appeal filed in the Clerk's Office of the District Court of the United States for the District of Columbia, wherein the United States of America is appellant and you are appellees, to show cause why the judgment rendered against the said appellant as mentioned in said appeal should not be corrected.

Harold M. Stephens,
HAROLD M. STEPHENS,

Finis J. Garrett,
FINIS J. GARRETT,

Joseph R. Jackson,
JOSEPH R. JACKSON,

Designated as Justices of the District Court of the United States for the District of Columbia.

This 30th day of September 1946.

9169 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Request to certify and transmit original documents

Filed Oct. 18, 1946.

Comes now the United States of America, plaintiff-appellant herein, and requests the Court to enter an order directing the clerk of this court to enter an order to certify and transmit to the Clerk of the Supreme Court of the United States the original papers and documents specified in the praecipe to the clerk of this court as the transcript of the record on appeal.

Edward Knuff,
EDWARD KNUFF,
Special Assistant to the Attorney General.

This 14th day of October 1946.

9170 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Order to certify and transmit original documents

Filed Oct. 18, 1946

In the above-entitled cause the United States of America, plaintiff-appellant herein, has applied for an order directing the clerk of this court to certify and transmit to the Clerk of the Supreme Court of the United States the original papers and documents specified in the praecipe to the clerk of this court as the transcript of the record on appeal.

It is therefore ordered

That the request be and the same is hereby granted, and the clerk of this court is directed to certify and transmit to the Supreme Court of the United States the original papers and documents specified in the praecipe.

HAROLD M. STEPHENS

This 14th day of October 1946

9171 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Praecipe for transcript of record

Filed Oct. 18, 1946

To the Clerk of the District Court of the United States:

Please prepare a transcript of the record in the above-entitled cause in the matter of the appeal herein and include in said transcript in the order given below the following papers, viz.:

1. The complaint; filed August 15, 1940.

2. Defendants' joint motion for bill of particulars; filed November 18, 1940.

3. Order on motion for bill of particulars; filed May 12, 1941.

4. Government's bill of particulars; filed May 15, 1941.

5. Amendment to complaint; filed June 5, 1941.

6. Answer of each defendant.

7. Expediting certificate; filed December 16, 1941.

8. Designation of judges appointed to the three-judge district court; filed September 17, 1942.

9172 9. Motion of each defendant for leave to file supplemental answer together with each proposed supplemental answer.

10. Government's motion for leave to amend prayer of complaint together with the proposed amendment; filed October 31, 1942.

11. Order granting the defendants leave to file supplemental answers; filed November 6, 1942.

12. Government's motion for leave to amend complaint by adding thereto a new paragraph numbered 46(a), together with the proposed amendment; filed February 22, 1943.

13. Order granting Government's motion to amend prayer of complaint; filed March 12, 1942.

14. Order granting Government's motion to amend complaint by adding a new paragraph numbered 46(a); filed March 12, 1943.

15. Defendants' joint motion to strike or, in the alternative, for partial judgment; filed September 28, 1943.

16. Revocation of designation of Judge Oscar E. Bland to perform duties of a District Judge; filed November 13, 1943.

17. Designation of Judge Joseph R. Jackson to perform duties of a District Judge; filed November 13, 1943.

18. Appointment of Judge Joseph R. Jackson as a member of the three-judge district court; filed November 13, 1943.

19. Opinion of the court (majority and dissenting) on defendants' joint motion for partial judgment; filed November 15, 1943.

9173 20. Order granting defendants' joint motion for partial judgment; filed November 15, 1943.

21. Supplemental answer of each defendant to paragraph 46(a) of the complaint; filed during the period November 15 to 29, 1943.

22. The following portions of the stenographic transcript of the testimony and trial proceedings: pages 539 to 541, line 23, inclusive; pages 583 to 636, line 9, inclusive; pages 915, line 14, to 6865, inclusive.

23. All Government exhibits.

24. Government's requests for admissions directed to Certain-teed, National, and USG; filed March 8th and 9th, 1944.

25. Answers of Certain-teed, and National to Government's requests for admissions; filed March 28th and April 3rd, 1944.

26. Opinion; filed June 15, 1946.

27. Findings of fact and conclusions of law; filed August 5, 1946.

28. Final order and decree of the district court; filed August 5, 1946.

29. Orders correcting the opinion of June 15, 1946; filed September 4th and 25th, 1946.

30. Assignment of errors and prayer for reversal; filed September 30, 1946.

31. The petition for appeal.

32. Statement of Jurisdiction.

33. Order allowing appeal.

34. Citation.

9174 35. Statement required by paragraph 2, Rule 12 of the Rules of the Supreme Court of the United States.

36. Proof of service of appeal papers.

37. Opposing Statement as to Jurisdiction.

38. Request to transmit original documents.

39. Order to transmit original documents.

40. This praecipe.

41. Proof of service of this praecipe.

42. Clerk's certificate.

Roscoe T. Steffen
ROSCOE T. STEFFEN
Special Assistant to the Attorney General

Edward Knuff
EDWARD KNUFF
Special Assistant to the Attorney General

This 17th day of October 1946.

9175 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Proof of service

Filed Oct. 25, 1946

Service of the Praecipe for Transcript of Record, Request to Certify and Transmit Original Documents and Order to Certify and Transmit Original Documents, is accepted and copies received this 18th day of October 1946.

Hugh Lynch, Jr., Attorney for the defendants, United States Gypsum Company, Sewell L. Avery, and Oliver M. Knode; Ernest H. Oliver, Attorney for the Defendant, The Celotex Corporation; Nicholas J. Chase, per Shapiro, Attorney for the Defendants, National Gypsum Company and Melvin H. Baker; Joseph P. Tumulty, Jr., Attorney for the Defendants, Ebsary Gypsum Company, Inc. and Frederick G. Ebsary; Carlton Ogburn, by Wiley Narron, Attorney for the Defendant, Certain-teed Products Corporation; James O'Donnell, Jr., Attorney for the defendants, Newark Plaster Company and Frederick Tomkins; Harold F. McGuire, per R. Spierson, Attorney for the Defendant, Henry J. Hartley; Scott P. Crampton, Attorney for the Defendant, Samuel M. Gloyd, Doing Business Under the Name of Texas Cement Plaster Company.

9176 In District Court of the United States

[File endorsement omitted.]

[Title omitted.]

Order granting extension of time within which to file counter-praecipe

Filed Oct. 25, 1946

It is by the Court this 25 day of October, 1946

Ordered that the time within which defendants may file their counter-praecipe setting forth their designation of record on appeal be and it is hereby extended from October 28, 1946 to November 15, 1946.

HAROLD M. STEPHENS

Copy of this proposed Order served upon Edward Knuff, Attorney for Plaintiff, Department of Justice, Washington, D. C. the 25th day of October, 1946.

HUGH LYNCH, JR.
Hugh Lynch, Jr.

9177 In District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Filed Nov. 15, 1946

Defendants' counter-praecipe

To the Clerk of the District Court of the United States for the District of Columbia:

In preparing the transcript of the record in the above-entitled cause, please include in said transcript the following:

1. Interrogatories addressed by plaintiff to defendants U. S. G., National, Certainteed, Celotex, Ebsary, Newark and Texas on or about January 23, 1942, and order, dated April 5, 1943, requiring answers to certain of said interrogatories.

2. Affidavit of Edward Knuff, sworn to October 4, 1943, submitted in opposition to motion to strike or, in the alternative, for judgment in respect to par. 46(a) of Complaint.

3. Reply affidavit of George S. Collins, sworn to October 15, 1943, submitted on motion to strike or, in the alternative, for judgment in respect to par. 46(a) of the Complaint.

9178 4. Stipulation and attached exhibit submitted to Court on November 15, 1943, in connection with motions to strike or, in the alternative, for judgment in respect of par. 46(a) of the Complaint.

5. Certified copies of the following patents: No's. 1,914,345; 1,938,354; 2,017,022; 2,079,338; and 2,080,009 submitted on motion to strike or, in the alternative, for judgment in respect of par. 46(a) of the Complaint.

6. All pages of the stenographic transcript of proceedings from page 1 to page 7750, inclusive, not designated in paragraph 22 of plaintiff's praecipe, dated October 17, 1946.

7. All errata sheets showing corrections to all pages of stenographic transcript of proceedings from page 1 to page 7750, inclusive and all pages of stenographic transcript containing tables of contents and tables of exhibits.

8. Stipulations correcting opinion of June 15, 1946, dated October 18, 1946 and October 29, 1946.

9. Order dated October 28, 1946, extending defendants' time to file counter-praecipe.

10. This counter-praecipe, together with proof of service thereof.

9179 OBJECTION TO PLAINTIFF'S PRAECIPE

1. Defendants object to Items 24 and 25 of plaintiff's praecipe upon the ground that the requests for admissions and answers thereto were not offered or received in evidence and are not properly part of the record in the case. (See Transcript pp. 6378-6381.)

November 15, 1946

Respectfully submitted,

Bruce Bromley, George S. Collins, Hugh Lynch, Jr., Attorneys for defendants, United States Gypsum Company, Sewell L. Avery and Oliver M. Knode; Elmer E. Finck, Nicholas J. Chase, Attorneys for defendants, National Gypsum Company and Melvin H. Baker; Donald N. Clausen, Herbert W. Hirsh, Charlton Ogburn, Attorneys for defendant, Certain-teed Products Corporation; F. W. H. Adams, Peter Keber, Attorneys for defendant, Henry J. Hartley; Andrew J. Dallstream, Ernes H. Oliver, Attorneys for defendant, The Celotex Corporation; Benjamin P. DeWitt, James O'Donnell, Jr., Attorneys for defendants, Newark Plaster Company and Frederick Tomkins; D. I. Johnston, George E. H. Goodner, Attorneys for defendant, Samuel M. Gloyd, etc.

Nov. 15, 1946. Service accepted and one copy received.

EDWARD KNUFF,
Sp. Asst. to Atty. General.

9180 District Court of the United States
for the District of Columbia

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Charles E. Stewart, Clerk of the District Court of the United States for the District of Columbia, hereby certify the foregoing pages numbered 1 to 9263, both inclusive, to be the original papers filed in the foregoing action, said

papers having been ordered transmitted to the Supreme Court of the United States by order of this Court filed October 18, 1946, and according to praecipes for transcript of record by counsel filed and made a part hereof, in action entitled United States of America, Plaintiff, vs. United States Gypsum Company, et al., Defendants, Civil Action No. 8017, as the same remains of record in said Court, except the following:

Items 4 and 8 of defendants' counter-praecipe, do not appear of record.

The Government's exhibits filed by counsel, are transmitted herewith under separate certificates.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 22nd day of November 1946.

CHARLES E. STEWART, *Clerk*,

[SEAL] By HARRY M. HULL,
Deputy Clerk.

9182 In the Supreme Court of the United States

Statement of points to be relied upon and designation of parts of the record necessary for consideration thereof

Filed Dec. 2, 1946.

1. Now comes the appellant in the above-entitled cause and for its statement of points upon which it intends to rely in its appeal to this Court adopts the points contained in its assignment of errors heretofore filed herein.

2. The entire record in this cause as filed in this Court pursuant to appellant's praecipe to the Clerk of the District Court of the United States for the District of Columbia is necessary for the consideration of the foregoing points and appellant designates said entire record for printing by the Clerk of this Court except as follows:

(1). Of the answers of the defendants, omit the answer of Bror G. Dahlberg. (Answer of Dahlberg is Part II of the answer of Celotex and appears on pages 36 to 39 of said answer.)

(2) Of the Transcript of Proceedings on Trial, omit those parts of the transcript designated in Schedule A attached hereto.

(3) Of the Government's exhibits, omit those listed in Schedule B attached hereto.

(4) Of the appellant's praecipe, omit items 24 and 25.

GEORGE T. WASHINGTON
Acting Solicitor General

This 22nd day of November 1946

9182-A SCHEDULE A—PARTS OF THE TRANSCRIPT OF PROCEEDINGS ON TRIAL TO BE OMITTED

Pages 1015 to 1017, line 18 inclusive.

Pages 1144, line 18 to 1153, line 20 inclusive.

Pages 1259 to 1260, line 14 inclusive.

Pages 1379 to 1381, line 3 inclusive.

Pages 1433 to 1434, line 3 inclusive.

Pages 1622 to 1623, line 5 inclusive.

Pages 1728 to 1731, line 23 inclusive.

Pages 1809 to 1813, line 8 inclusive.

Pages 1866 to 1878, inclusive.

Pages 1880 to 1882, line 2 inclusive.

Pages 2006 to 2010, inclusive.

Pages 2113 to 2116, inclusive.

Pages 2230 to 2233, line 6 inclusive.

Pages 2367 to 2376, line 7 inclusive.

Pages 2502 to 2506, line 4 inclusive.

Pages 2617 to 2622, line 18 inclusive.

Pages 2728 to 2732, line 17 inclusive.

Pages 2843 to 2846, inclusive.

Pages 2952 to 2968, line 20 inclusive.

Pages 3075 to 3082, line 1 inclusive.

Pages 3222 to 3229, inclusive.
Pages 3231 to 3236, inclusive.
Pages 3349 to 3352, line 8 inclusive.
Pages 3480 to 3486, inclusive.
Pages 3534 to 3537, line 2 inclusive.
Pages 3660 to 3665, inclusive.
Pages 3783 to 3787, line 8 inclusive.
Pages 3927 to 3934, line 22 inclusive.
9183 Pages 4068 to 4071, inclusive.
Pages 4213 to 4215, inclusive.
Pages 4333 to 4334, line 14 inclusive.
Pages 4431 to 4438, line 14 inclusive.
Pages 4547 to 4552, line 3 inclusive.
Pages 4663 to 4664, line 14 inclusive.
Pages 4792 to 4795, line 15 inclusive.
Pages 4923 to 4926, inclusive.
Pages 5040 to 5055, line 11 inclusive.
Pages 5161 to 5162, inclusive.
Pages 5308 to 5315, line 14 inclusive.
Pages 5437 to 5445, line 8 inclusive.
Pages 5563 to 5566, line 4 inclusive.
Pages 5695 to 5697, line 16 inclusive.
Pages 5829 to 5835, line 16 inclusive.
Pages 5937 to 5941, line 14 inclusive.
Pages 6069 to 6076, line 8 inclusive.
Pages 6136 to 6138, line 5 inclusive.
Pages 6153 to 6154, inclusive.
Pages 6279 to 6283, line 1 inclusive.
Pages 6284 line 16 to 6353, line 10 inclusive.

Pages 6400 to 6405, line 10 inclusive.

Pages 6541 to 6546, line 3 inclusive.

Pages 6641 to 6645, line 1 inclusive.

Pages 6720 to 6724, line 6 inclusive.

Pages 6822 to 6823, line 23 inclusive.

9184 SCHEDULE B—LIST OF GOVERNMENT'S EXHIBITS TO BE OMITTED

40 to 42 inclusive, 54, 103, 116, 137, 139, 140, 143, 148, 210, 219 to 223 inclusive, 228 A, 229, 233, 239, 240, 242, 243, 257, 267, 270, 272, 273, 296, 297, 303, 304, 309, 319, 320, 342, 344, 358, 401, 402, 419, 477 to 479 inclusive, 488, 507, 551, 552, 557, 559 to 561 inclusive, 563 to 568 inclusive, 568 A, 569 570, 570 A, 579 to 583 inclusive, 586 to 590 inclusive, 599 A, 600, 600 A, 606 to 608 inclusive, 622, 622 A, 623, 645 to 692 inclusive, 698, 715, 728.

9185 Service of the attached Statement of Points to be Relied Upon and Designation of Parts of the Record Necessary for Consideration thereof, together with Schedules A and B attached thereto, is accepted and copies received this 25th day of November, 1946.

Hugh Lynch, Jr., Attorney for the Defendants, United States Gypsum Company, Sewell L. Avery, and Oliver M. Knode; Ernest H. Oliver, Attorney for the Defendant, The Celotex Corporation; Nicholas J. Chase, Attorney for the Defendants, National Gypsum Company and Melvin H. Baker; Joseph P. Tumulty, Jr., Attorney for the Defendants, Ebsary Gypsum Company, Inc. and Frederick G. Ebsary; Charlton Ogburn, Attorney for the Defendant, Certain-teed Products Corporation; James O'Donnell, Jr., F. S., Attorney for the Defendants, Newark Plaster Company and Frederick Tomkins; Harold F. McGuire for Henry J. Hartley, Attorney for the Defendant, Henry J. Hartley, per M. J. Hoffman; Geo. E. H. Goodner, Attorney for the Defendant, Samuel M. Gloyd, Doing Business Under the Name of Texas Cement Plaster Company.

[File endorsement omitted.]

9186 In the Supreme Court of the United States

Appellees' designation of additional parts of the record to be printed

Filed Dec. 17, 1946

Appellees hereby designate the following for printing by the Clerk of this Court, in addition to those parts designated for printing by appellant:

(1) p. 365,* line 4 through line 15.

(2) p. 657, line 6 through line 25.

(3) p. 673 through p. 681, line 22.

(4) p. 734, line 6 through p. 735, line 5.

(5) p. 744 through p. 757, line 5.

(6) p. 2843 through p. 2844, line 3.

(7) p. 4436, line 22 through p. 4438, line 14.

(8) p. 5308, line 18 through p. 5311, line 17.

(9) p. 5313, first two words of line 18, p. 5314, line 4 through p. 5315, line 14.

(10) p. 7240, line 19 through p. 7254, line 5.

(11) p. 7609 through p. 7612.

(12) p. 7624, line 5 through p. 7629, line 5.

(13) p. 7632, line 22 through p. 7635, line 21.

9187 (14) p. 7636 through p. 7637.

(15) p. 7722, line 3 through p. 7732, line 8.

(16) The following parts of interrogatories addressed by plaintiff to defendant United States Gypsum Company on or about January 23, 1942:

(a) From page 1, caption and 5 lines immediately under caption;

(b) From page 5, paragraphs 40, 41 and 42; and

* Except where otherwise indicated, page references are to Stenographic Transcript of Proceedings.

(c) From page 6, the material following paragraph 51.

(17) The following parts of interrogatories addressed by plaintiff to defendant National Gypsum Company on or about January 23, 1942:

(a) From page 1, caption and 5 lines immediately under caption;

(b) From page 5, paragraphs 40, 42 and 43; and

(c) From page 6, the material following paragraph 53.

(18) The following parts of interrogatories addressed by plaintiff to defendant Certain-teed Products Corporation on or about January 23, 1942:

(a) From page 1, caption and 5 lines immediately under the caption;

(b) From page 5, paragraphs 43, 45 and 46; and

(c) From page 6, the material following paragraph 56.

(19) The following parts of interrogatories ad-
9188 dressed by plaintiff to defendant, The Celotex Corporation on or about January 23, 1942:

(a) From page 1, caption and 5 lines immediately under the caption;

(b) From pages 3 and 4, paragraphs 31 and 32; and

(c) From page 5, the material following paragraph 42.

(20) The following parts of interrogatories addressed by plaintiff to defendant, Ebsary Gypsum Company, Inc., on or about January 23, 1942:

(a) From page 1, caption and 5 lines immediately under the caption;

(b) From page 5, paragraphs 40, 42 and 43; and

(c) From page 6, the material following paragraph 53.

(21) The following parts of interrogatories addressed by plaintiff to defendant Newark Plaster Company on or about January 23, 1942:

(a) From page 1, caption and 5 lines immediately under the caption;

(b) From page 5, paragraphs 42 and 43; and

(c) From page 6, the material following paragraph 59.

(22) The following parts of interrogatories addressed by plaintiff to defendant Texas Cement Plaster Company on or about January 23, 1942:

(a) From page 1, caption and 5 lines immediately under caption;

9189 (b) From pages 4 and 5, paragraphs 36, 38 and 39; and

(c) From page 5, the material following paragraph 47.

(23) The following parts of the Trial Court's order, dated April 5, 1943, requiring answers to certain interrogatories:

(a) Pages 1 and 2;

(b) From the 10th line from the bottom of page 4 through line 3 of page 6; and

(c) From page 8, last paragraph and signature.

(24) Affidavit of Edward Knuff, sworn to October 4, 1943, submitted in opposition to motion to strike or, in the alternative, for judgment in respect of paragraph 46(a) of complaint.

(25) Reply affidavit of George S. Collins, sworn to October 15, 1943, submitted on motion to strike or, in the alternative, for judgment in respect of paragraph 46(a) of the complaint.

(26) The granting provisions of the certified copy of Patent No. 2,017,022.

(27) Stipulations correcting opinion of June 15, 1946, dated October 18, 1946 and October 29, 1946.

(28) Order dated October 28, 1946, extending time to file counter-praecipe.

(29) Counter-praecipe dated November 15, 1946.

(30) Order dated December 3, 1946, extending time of appellees to designate additional parts of record for printing.

In printing the foregoing, please insert items (1) 9190 through (15) in proper sequence in connection with the pages of Transcript of Proceedings designated by appellant; insert items (16) through (23) after item (14) of appellant's praecipe dated October 17, 1946; insert items (24) through (26) after item (15) of appellant's praecipe dated October 17, 1946; insert item (27) after item (29) of appellant's praecipe dated October 17, 1946, and insert items (28) through (30) after item (41) of appellant's praecipe dated October 17, 1946.

December 17, 1946.

Respectfully submitted,

Bruce Bromley, Attorney for appellees, United States Gypsum Company, Sewell L. Avery and Oliver M. Knode; Elmer E. Finck, Nicholas J. Chase, Attorneys for appellees, National Gypsum Company and Melvin H. Baker; Donald N. Clausen, Herbert W. Hirsh, Charlton Ogburn, Attorneys for appellee, Certain-teed Products Corporation; F. W. H. Adams, Peter Keber, Attorneys for appellee, Henry J. Hartley; Andrew J. Dallstream, Ernest H. Oliver, Attorneys for appellee, The Celotex Corporation; Benjamin P. DeWitt, James O'Donnell, Jr., Attorneys for appellees, Newark Plaster Company and Frederick Tomkins; D. I. Johnston, George E. H. Goodner, Attorneys for appellee, Samuel M. Gloyd, etc.

9191 Service of three copies of Appellees' designation of additional parts of the record to be printed, is acknowledged this 17 day of December 1946.

George T. Washington,
GEORGE T. WASHINGTON,
M. B.
Acting Solicitor General.

[File endorsement omitted.]

9192 Supreme Court of the United States

Order noting probable jurisdiction

December 16, 1946

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

9193 *Government's Exhibit No. 1*

This agreement, executed in duplicate this 29th day of July, 1926, by and between the United States Gypsum Company, an Illinois corporation, of Chicago, Illinois, hereinafter referred to as "Gypsum Company", party of the first part, and The Beaver Products Company, Inc., a New York corporation, of the town of Tonawanda, State of New York, hereinafter referred to as "Beaver Company", party of the second part; witnesseth:

Whereas, the Gypsum Company is the owner of the entire right, title and interest in, to and under Letters Patent of the United States, No. 1,029,328, dated June 11th, 1912, for Method of Manufacturing Plaster Board, and No. 1,034,746, dated August 6th, 1912, for Plaster Board, (hereinafter called the "Utzman patents"), and is also the owner of the entire right, title and interest in, to and under the Letters Patent and Applications for Letters Patent of the United States set forth in Exhibit "A" attached hereto and made a part hereof, and any and all Letters Patent which may be granted therefor or thereupon; and

Whereas, the Gypsum Company is about to acquire in part settlement of its claims against said Beaver Company the entire right, title and interest in, to and under the Letters Patent and Applications for Letters Patent of the United States, set forth in Exhibit "B" attached hereto and made a part hereof; and

Whereas, heretofore, on or about November 20th, 1916, the Gypsum Company filed its Bill of Complaint in the United States District Court for the Northern Dis-
9194 trict of Illinois, Eastern Division, against the Bestwall Manufacturing Company, (a predecessor in title of the Beaver Company) charging infringement by it of the aforesaid Letters Patent, Numbers 1,029,328 and 1,034,746, and thereafter the said Court, upon a trial of the issues in said cause, by its decision rendered July 21, 1919 (258 Fed. 647) found both of the said Letters Patent valid and infringed by the defendant in said cause, and subsequently on or about January 4th, 1921, the decree of the District Court, entered pursuant to the aforesaid decision and awarding an accounting for profits and damages and ordering the issuance of a permanent injunction, was affirmed by the United States Circuit Court of Appeals for the Seventh Circuit (270 Fed. 542), and subsequently the Gypsum Company on

June 13th, 1921, filed its Supplemental Bill in said cause charging infringement of the said last mentioned Letters Patent by the method employed in the manufacture of and by the modified form of plaster board then being manufactured and sold by the defendant in said cause, and thereupon further proceedings were had and taken in said cause (decisions with respect to which are reported in 290 Fed. (C. C. A.) 798, 290 Fed. (C. C. A.) 800, and 263 U. S. 713), and thereafter upon trial in open court the said District Court on or about July 21, 1925, found the issues under said supplemental bill in favor of the Gypsum Company and that the said Letters Patent were infringed by the method of manufacture and by the modified form of plaster board then being manufactured and sold by the defendant therein and ordered an accounting of profits and damages and the issuance of a permanent injunction (decision not yet reported) and more recently, on or about No-
9195 vember 4, 1925, the United States Circuit Court of Appeals for the Seventh Circuit granted a stay of the accounting proceedings and of the issuance of the injunction so ordered by the District Court upon the filing by the defendant (appellant) of a bond in the penal sum of One Million Dollars ($1,000,000.), which said bond was duly filed and said cause is now pending on appeal in the said United States Circuit Court of Appeals for the Seventh Circuit; and

Whereas, the Gypsum Company has a substantial claim against the Beaver Company because and on account of said infringement, and the parties hereto have expended large sums of money in said patent litigation and the same has been otherwise costly and expensive to them and they are desirous of making a full and complete settlement of said controversy and of avoiding further litigation; and

Whereas, the parties hereto have agreed to settle said claim by the payment to the Gypsum Company by the Beaver Company of the sum of Two Hundred Fifty Thousand Dollars ($250,000.00) in cash, and an amount equivalent to five per cent. (5%) of Beaver Company's selling price of all plaster board or gypsum wallboard manufactured and sold by it until August 6, 1929, and one and one-half per cent. (1½%) of such selling price from August 6, 1929 to February 10, 1937, and the assignment to the Gypsum Company of the said Letters Patent and applications for Letters Patent set forth in said Exhibit "B", and in the

granting to Beaver Company of the license as in this agreement contained.

Now, therefore, in consideration of the sum of One Dollar ($1.00) and other good and valuable considerations, the receipt whereof is hereby acknowledged, the parties hereto do hereby agree as follows, to-wit:

9196 1. The Beaver Company hereby agrees to pay to the Gypsum Company upon the execution of this agreement the sum of Two Hundred Fifty Thousand Dollars ($250,000.00) and to assign, transfer, convey and set over, or cause to be assigned, transferred, conveyed and set over, unto the Gypsum Company the said Letters Patent and Applications for Letters Patent described in said Exhibit "B" and any and all Letters Patent which may be issued therefor or thereupon, in consideration of which, and of the payment by the Beaver Company to the Gypsum Company of the amounts hereinafter mentioned, the Gypsum Company does hereby release and discharge the Beaver Company, the Beaver Board Companies, Bestwall Manufacturing Company, the American Cement Plaster Company, and every subsidiary, associated or affiliated company, and all persons privy to or claiming under any of them, from all claims and demands, whether for damages or profits or for both damages and profits, which the Gypsum Company now has against them or any of them, for or on account of any infringement of any of its said Utzman patents and said patents described in Exhibit "A", by the Beaver Company or any predecessor in interest or title, prior to the date hereof.

2. The parties hereto do hereby agree to dismiss, without further cost to either party, all actions both at law and in equity, wheresoever pending, arising out of or in any way connected with the infringement of said Utzman patents, against The Beaver Products Company, Inc., the Beaver Board Companies, Bestwall Manufacturing Company, the American Cement Plaster Company, or any subsidiary, associated or affiliated company of any of them, it being understood, however, that the Appeal in Cause No. 3693, October Term, 1925, now pending in the Cir-
9197 cuit Court of Appeals for the Seventh Circuit, shall be dismissed so that the decree below shall stand as a final adjudication in said cause. It is further understood that the judgment therein for an accounting shall be satis-

fied of record and that the Gypsum Company waives all right to the issuance of a writ of injunction pursuant to the terms of said decree.

3. The Gypsum Company agrees to give and grant unto Beaver Company an indivisible and non-exclusive right, license and privilege of using the processes and making and using the machines and/or inventions set forth and claimed in said Utzman Patents and in any and all of said patents or applications for letters patent described in said Exhibits "A" and "B", at any and all factories now or hereafter owned and/or operated or controlled by the Beaver Company or any subsidiary, associated or affiliated company, and of manufacturing at any such place or places, selling and using plaster board or gypsum wallboard embodying the inventions and improvements set forth and claimed in said Utzman patents and said patents and applications for letters patent described in Exhibits "A" and "B", until the 10th day of February, 1937, the date of expiration of Patent No. 1,330,413, mentioned in said Exhibit "A", which said license shall be evidenced by a separate instrument this day executed and delivered to the Beaver Company, a true copy of which is hereto attached marked Exhibit "C", and made a part hereof.

4. The Beaver Company further agrees to pay to the Gypsum Company in settlement and discharge of the said claim, and for the right, license and privilege of
9198 manufacturing, using and/or selling plaster board or gypsum wallboard, and for the privilege of using the processes and making and using the machines and/or inventions embodying the inventions and improvements set forth and claimed in said Utzman Patents and in any and all of said patents and applications for letters patent described in Exhibits "A" and "B", an amount (hereinafter for convenience referred to as a license fee or royalty) equivalent to five per cent. (5%) of the selling price of the Beaver Company, of all plaster board or gypsum wallboard of every kind, manufactured and sold by the Beaver Company between the date hereof and August 6, 1929 the date of the expiration of said Utzman Patent No. 1,034,746, and thereafter an amount equivalent to one and one-half per cent. (1½%) of the selling price of the Beaver Company, of all such plaster board or gypsum wallboard, from August 6, 1929 until February 10, 1937, the date of the expiration of said patent No. 1,330,413.

5. It is expressly understood and agreed that the said license shall be personal to the Beaver Company and that the same or any right therein or thereunder shall not be sold, assigned or transferred without the written consent of the Gypsum Company or transferred by operation of law, except that the same may be assigned to any successor or subsidiary corporation of the Beaver Company, and except that in the event of the appointment of a receiver or receivers for the purpose of conserving the business and assets of the Beaver Company, such receiver or receivers shall succeed to all the Beaver Company's rights under said license and under this agreement.

9199 6. The said License shall contain a provision that the said license is granted upon the condition that the Gypsum Company shall have, and that it does thereby reserve, the right to determine and fix at any time, and to change from time to time during the term of said Utzman Patent Number 1,034,746, the minimum price or prices (not more, however, than the then prevailing market price or prices) at which the Beaver Company shall sell any plaster board or gypsum wallboard manufactured by the Beaver Company embodying the improvements set forth and claimed in said Utzman Patent Number 1,034,746, and in case it shall exercise the right so reserved it shall first serve written notice of its intention so to do upon the Beaver Company, accompanied with a statement of the price or prices at which the Beaver Company shall sell said patented product, and thereafter shall give to the Beaver Company written or telegraphic notice of any change in such price or prices, and the Beaver Company expressly covenants and agrees that it will not at any time during the term of said Utzman Patent Number 1,034,746, after the receipt of such notice, directly or indirectly sell or offer for sale any plaster board or gypsum wallboard, embodying the improvements set forth and claimed in said Utzman Patent Number 1,034,746, at a price or prices less than that stated by the Gypsum Company in said notice, or in any such written or telegraphic notice of a change in such price or prices. It is expressly understood and agreed that this provision of the said License shall apply only to the said Utzman Patent Number 1,034,746, and shall not apply to any of said other Letters Patent.

9200 7. The Beaver Company agrees, during the term of said license, to keep separate, full and accurate

books of account and records showing the exact quantity of all plaster board and gypsum wallboard manufactured and sold by it, and agrees that on or before the 20th day of each and every calendar month during said term it will render unto the Gypsum Company true written returns, verified under oath by an officer or other agent of the Beaver Company, setting forth the quantity of all said plaster board and gypsum wallboard manufactured and sold by it during the preceding calendar month, together with the price or prices at which the same was sold, such written returns to be delivered to the Gypsum Company at its office in Chicago, Illinois, and the Beaver Company agrees to pay to the Gypsum Company, on or before the 20th day of each calendar month, at the office of the Gypsum Company at Chicago, Illinois, the hereinbefore stipulated royalties or license fees which may then be due under the said license on account of all of said plaster board and gypsum wallboard manufactured and sold by it during the next preceding calendar month.

8. The Gypsum Company, or its duly authorized representative, shall during the term of said license have the right at all reasonable times during business hours to inspect the books of account and records of the Beaver Company referred to in the next preceding paragraph hereof, including all records of every kind showing the quantity of said plaster board and gypsum wallboard manufactured and sold by it, the price or prices at which the same was sold, and to make copies thereof and memoranda therefrom.

9201 9. The Beaver Company agrees that all plaster board or gypsum wallboard manufactured and sold by it embodying the claims of any of said patents, shall be distinctly marked with the word "patented" together with the dates of the Utzman patents and the dates of any other patents which the Gypsum Company may properly specify, and in connection with the said markings it will further mark said patented product with the words "Licensed under the above Letters Patent", which markings shall be plainly visible.

10. Having regard for the fact that there are or may be certain manufacturers of plaster or gypsum products who do not or may not manufacture gypsum wallboard or plaster board but who desire or may desire to have gypsum wall-

board or plaster board manufactured for them, it is understood and agreed that the Beaver Company may manufacture gypsum wallboard or plaster board embodying the inventions and improvements set forth and claimed in said Letters Patent, for any such other manufacturer; provided, however, that the said license fee or royalty to be paid to the Gypsum Company as hereinbefore provided, shall be based upon all gypsum wallboard or plaster board manufactured for such other manufacturer, and upon the regular selling price of the Beaver Company of such plaster board or gypsum wallboard to its regular dealer trade at the time of such sale, and shall not be based upon the price at which said plaster board or gypsum wallboard is sold by the Beaver Company to such other manufacturer.

11. The Beaver Company expressly covenants and agrees that all of said patented product sold by it and commonly known in the trade as "seconds" shall be plainly invoiced as seconds and shall be plainly marked with a visible red stamp or label firmly fixed on each of said boards
9202 showing the word "seconds" in letters at least three inches in height.

12. It is expressly understood and agreed that the patented product manufactured and sold hereunder shall include all board having a protected edge, it being recognized by the parties hereto that any board manufactured by the Beaver Company having a protected edge is within the scope of said Utzman patents Nos. 1,029,328 and 1,034,746.

After the expiration of said Letters Patent No. 1,034,746, and until the expiration of Letters Patent No. 1,330,413, it is expressly understood and agreed that the patented product manufactured and sold hereunder shall include all board having a protected edge, the parties hereto agreeing hereby that any and all board having a protected edge is within the claims or is manufactured according to the processes or by the use of machines embodying the claims either of said Letters Patent No. 1,330,413, or of one or more of the other of said letters patent listed in Exhibits "A" and "B" hereto, under which the aforesaid indivisible and non-exclusive right, license and privilege is granted.

13. As one of the considerations for the indivisible and non-exclusive license herein and hereby granted, Beaver Company hereby acknowledges the validity of the letters patent, granted and to be granted, forming the subject matter of said license, throughout the respective lives of

the said letters patent and each of them, and agrees that it will not at any time before or after the expiration or termination of said license, directly or indirectly, by itself, through or together with another or others, contest the validity of either or any of said letters patent or the title thereto of the Gypsum Company, or question in any way the prima facie scope of either or any of said letters
9203 patent, or the priority, novelty or patentability of the subject matter of any of the said applications for letters patent.

14. In the event that the Beaver Company shall at any time neglect, fail or refuse to keep or perform any of the conditions and agreements herein to be by the Beaver Company kept and performed, then Gypsum Company, at its election, may serve upon Beaver Company notice of intention to terminate the license herein granted, which notice shall specify the alleged neglect, failure or refusal; and if, within thirty (30) days from the date of delivery of said notice, the Beaver Company shall not keep or perform the conditions and agreements specified in said notice, then said license and all rights acquired by the Beaver Company thereunder shall be and become cancelled and terminated, without the necessity of any court action; provided, however, that the Beaver Company shall not be relieved thereby from paying to the Gypsum Company any licensee fees or royalties or any other obligations accrued hereunder at the time of such termination. In case at any time the Beaver Company shall commit any act of bankruptcy, then the license hereunder shall immediately be and become cancelled and terminated, but the Gypsum Company shall not thereby be prevented from collecting all license fees or royalties and other obligations accrued hereunder at the time of such termination. Failure on the part of the Gypsum Company to notify the Beaver Company of a breach of the license or to terminate said license because of such breach shall not constitute a waiver of the Gypsum Company's right to terminate said license in accordance with the provisions of this paragraph. The Gypsum Company may specif-
9204 ically enforce this contract or any of the terms, conditions and covenants thereof, by injunction or in such other manner as may be provided by law.

15. It is understood and agreed that if at any time during the continuance of the license the Beaver Company shall, in the judgment of the Gypsum Company, suffer substan-

tial detriment by reason of any infringement upon the part of any person or persons of the said patents whether now or hereafter issued under which the license is granted, the Gypsum Company will afford the Beaver Company such reasonable protection as in the judgment of the Gypsum Company shall be necessary or proper, and in case the Gypsum Company shall grant to any such infringer, or to any other person, any license under said patents upon terms more favorable than those contained in the said license, then it will grant to Beaver Company a license on the same terms.

16. The Gypsum Company agrees, upon the expiration of the said license, to grant to the Beaver Company a license to manufacture, use and/or sell under said patents and applications for letters patent described in said Exhibits "A" and "B", upon such terms and conditions as may then be agreed upon between the parties hereto, and failing to arrive at any such agreement the Gypsum Company will grant to the Beaver Company from and after such expiration date, a license to make, and use the machines and use the processes and to manufacture, use and sell the articles disclosed in said patents and applications for letters patent described in said Exhibit "B", whether or not disclosed or claimed in any patent or application for letters patent, described in Exhibit "A", in consideration of the sum
9205 of One Dollar ($1.00), the receipt whereof is hereby acknowledged by the Gypsum Company.

17. The terms "plasterboard" and "gypsum wall board" shall be understood to mean all board by whatever name called having the structural characteristics of plasterboard or gypsum wall board, irrespective of the purpose for which the same may be sold or used.

18. This agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto, but nothing in this paragraph contained shall be construed to permit an assignment by the Beaver Company of any right hereunder, or under said license, except as hereinabove specifically authorized.

19. It is understood and agreed that the patents and applications for Letters Patent set forth in Exhibit "B" are pledged with Central Trust Company of Illinois and Aksel K. Bodholdt, Trustees under a certain First and Refunding mortgage, executed by Beaver Products Company, Inc.,

to said Central Trust Company and Aksel K. Bodholdt, Trustee, dated July 1, 1922, and the same are to be released and assigned to the Gypsum Company by said trustees, or one of said trustees. It is further understood and agreed that the Beaver Company shall be authorized and empowered to pledge the license herein provided for with said trustees under said mortgage, with the express understanding, however, that the same shall not be transferred or assigned by said trustees, on a foreclosure of said mortgage, to any person or persons, without the consent of the Gypsum Company.

In witness whereof, the parties hereto have caused these presents to be signed by their respective Presidents,
9206 attested by their respective Secretaries, and their corporate seals to be hereunto affixed, in duplicate, the day and year first above written.

UNITED STATES GYPSUM COMPANY,

By S. L. AVERY,
Its President.

ATTEST:

GEO. G. GLYNN,
Asst. Secretary.

THE BEAVER PRODUCTS COMPANY, INC.,

By A. S. BLAGDEN,
Its President.

ATTEST:

E. H. LEECHWORTH,
Secretary.

9207 EXHIBIT "A"

Utzman patent No. 1,330,413. Application filed September 3, 1918, granted February 10, 1920, expires February 10, 1937.

Birdsey patent No. 1,358,508. Application filed January 2, 1920, granted November 9, 1920, expires November 9, 1937.

Utzman patent No. 1,383,249. Application filed August 13, 1918, granted June 28, 1921, expires June 28, 1938.

Birdsey patent No. 1,383,254. Application filed July 29, 1918, granted June 28, 1921, expires June 28, 1938.

Birdsey patent No. 1,383,255. Application filed January 2, 1920, granted June 28, 1921, expires June 28, 1938.

Birdsey patent No. 1,384,298. Application filed August 19, 1920, granted July 12, 1921, expires July 12, 1938.

Birdsey patent No. 1,395,031. Application filed January 2, 1920, granted October 25, 1921, expires October 25, 1938.

Birdsey patent No. 1,395,032. Application filed January 2, 1920, granted October 25, 1921, expires October 25, 1938.

Birdsey patent No. 1,406,967. Application filed January 3, 1921, granted February 21, 1922, expires February 21, 1939.

Birdsey patent No. 1,427,939. Application filed January 3, 1921, granted September 5, 1922, expires September 5, 1939.

Birdsey patent No. 1,428,624. Application filed January 2, 1920, granted September 12, 1922, expires September 12, 1939.

9208 Brookby patent No. 1,489,693. Application filed September 25, 1922, granted April 8, 1924, Expires April 8, 1941.

Birdsey patent No. 1,514,827. Application filed October 6, 1921, granted November 11, 1924, expires November 11, 1941.

Birdsey patent No. 1,515,380. Original application filed January 2, 1920, granted November 11, 1924, expires November 11, 1941.

Birdsey patent No. 1,518,243. Application filed September 22, 1922, granted December 9, 1924, expires December 9, 1941.

Birdsey patent No. 1,525,715. Application filed January 2, 1920, granted February 10, 1925, expires February 10, 1942.

Birdsey patent No. 1,526,307. Application filed October 10, 1921, granted February 10, 1925, expires February 10, 1942.

Utzman patent No. 1,540,045. Application filed March 14, 1923, granted June 2, 1925, expires June 2, 1942.

Birdsey patent No. 1,558,459. Application filed October 4, 1922, granted October 27, 1925, expires October 27, 1942.

Birdsey patent No. 1,561,635. Application filed January 3, 1921, granted November 17, 1925, expires November 17, 1942.

Birdsey application Serial No. 437,062. Filed January 13, 1921.

Birdsey application Serial No. 506,676, filed October 10, 1921.

Birdsey application Serial No. 545,231 filed March 20, 1922.

Birdsey application Serial No. 555,627, filed April 19, 1922.

Birdsey application Serial No. 583,795, filed August 23, 1922.

Moore application Serial No. 590,356, filed September 25, 1922.

Knode application Serial No. 590,358, filed September 25, 1922.

Birdsey application Serial No. 605,896 filed December 9, 1922.

Smith application Serial No. 662,359 filed September 12, 1923.

9209 Birdsey application Serial No. 737,237, filed September 12, 1924.

Utzman application Serial No. 750,224, filed November 17, 1924.

Birdsey application Serial No. 754,927, filed December 10, 1924.

Brookby application Serial No. 50,538, filed August 17, 1925.

Birdsey application Serial No. 57,507, filed September 21, 1925.

Brookby & Absmeier application Serial No. 91,297, filed March 1, 1926.

9210 EXHIBIT "B"

Patent See Note (3)	Armstrong patent No. 1,278,821, app'n. filed Jan. 4, 1918, granted September 17, 1918, expires September 17, 1935.	
Re 16860	Armstrong patent No. 1,348,387, app'n. filed Mar. 15, 1919, granted August 3, 1920, expires August 3, 1937, app'n. for reissue filed June 3, 1922, Ser. 565,737.....	2475
Re 16969	Armstrong patent No. 1,367,292, app'n. filed July 12, 1919, granted February 1, 1921, expires February 1, 1938, app'n. for reissue filed June 9, 1922, Ser. 567,205.....	2502
See Note (3)	Utzman patent No. 1,455,127, app'n. filed June 14, 1922, granted May 15, 1923, expires May 15, 1940.	
See Note (3)	Utzman patent No. 1,492,588, app'n. filed June 14, 1922, granted May 6, 1924, expires May 6, 1941.	
See Note (3)	Williams patent No. 1,519,180, app'n. filed Aug. 18, 1922, granted December 16, 1924, expires December 16, 1941.	
See Note (3)	Armstrong patent No. 1,556,575, app'n. filed Oct. 1, 1921, granted October 13, 1925, expires October 13, 1942.	
See Note (3)	Armstrong patent No. 1,399,455, app'n. filed Feb. 24, 1920, granted December 6, 1921, expires December 6, 1938.	
See Note (3)	Tyler patent No. 1,417,117, app'n. filed Nov. 15, 1919, granted May 23, 1922, expires May 23, 1939.	
#1701291	Armstrong app'n. Ser. No. 310,470, filed July 12, 1919*.....	2620
#1638280	Utzman app'n. Ser. No. 374,833, filed April 19, 1920.....	2397
#1641611 Re #18363	Armstrong app'n. Ser. No. 377,421, filed April 29, 1920.....	2331
#1686671	Speer app'n. Ser. No. 427,044, filed November 29, 1920.....	2541
#1641648	Speer app'n. Ser. No. 427,045, filed November 29, 1920.....	2330
#1604707	Mehlhope app'n Ser. No. 473,288, filed May 28, 1921.....	2215
#1731116	Utzman app'n. Ser. No. 477,371, filed June 14, 1921.....	2711
Abandoned 1927	Kohler app'n. Ser. No. 482,073, filed July 2, 1921.	
1665168	Gustafson app'n. Ser. No. 509,366 filed December 2, 1919. Renewed October 21, 1921.....	3547

* Assignment not recorded, Patent issued to U. S. G. Co.

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9211.

See Note (3) 1673944	Kohler, et al. app'n. Ser. No. 540,412, filed March 2, 1922.	
Re 16860	Armstrong app'n. Ser. No. 565,737, filed June 3, 1922.....	2475
Re 16969	Armstrong app'n. Ser. No. 567,205, filed June 9, 1922.....	2502
#1824245	Utzman app'n. Ser. No. 581,361, filed August 12, 1922.....	3138
#1703183	Utzman, app'n. Ser. No. 581,362, filed August 12, 1922.....	2631
Abandoned 1931	Williams app'n. Ser. No.[1] 582,606, filed August 18, 1922.	
Abandoned 1926	Tonning app'n. Ser. No. 590,221, filed September 25, 1922.	
Abandoned 1928	Armstrong app'n. Ser. No.[2] 596,983, filed October 26, 1922.	
Abandoned 1927	Speer app'n. Ser. No.[2] 610,739, filed January 5, 1923.	
Abandoned 1927	Rehm app'n. Ser. No. 8,654, filed February 12, 1925.	
Abandoned 1927	Rehm app'n. Ser. No. 8,655, filed February 12, 1925.	
Abandoned 1927	Rehm app'n. Ser. No. 8,656, filed February 12, 1925.	
Abandoned 1927	Rehm app'n. Ser. No. 8,657, filed February 12, 1925.	
Abandoned 1927	Rehm app'n. Ser. No. 23,775, filed April 17, 1925.	

1 Assignment to Patent Dept. 2-9-1934.

2 Assignment to Patent Dept. 2-6-1934.

3 Original letters patent not located. See attorneys' letter in Patent File #2215. 2-19-1934.

9212 EXHIBIT "C"

LICENSE AGREEMENT

This agreement executed in duplicate this ——— day of July, 1926, by and between the United States Gypsum Company, an Illinois corporation of Chicago, Illinois, hereinafter referred to as "Licensor" and The Beaver Products Company, Inc., a New York Corporation of the Town of Tonawanda, State of New York, hereinafter referred to as "Licensee", witnesseth:

Whereas, Licensor is the owner of the entire right, title and interest in, to and under Letters Patent of the United States, No. 1,029,328, dated June 11th, 1912, and No. 1,034,746, dated August 6th, 1912, (hereinafter called the "Utzman Patents"), and is also the owner of the entire right, title and interest in, to and under the Letters Patent and applications for Letters Patent of the United States set forth in Exhibit "A" attached hereto and made a part hereof, and any and all Letters Patent which may be granted therefor or thereupon; and

Whereas, heretofore said Utzman patents have been adjudicated by the United States District Court for the Northern District of Illinois, Eastern Division, and by the United States Circuit Court of Appeals for the Seventh Circuit (258 Fed. 647; 270 Fed. 542; 290 Fed. 798; 290 Fed. 800; see also 263 U. S. 713), and said courts have decreed that said Utzman patents are valid and were infringed by the defendants in the cases so reported, and in the decision of the said District Court rendered on or about July 21, 1925, and not yet reported, by reason of the making, using and selling of plaster board or gypsum wallboard
9213 having protected edges, and said District Court has ordered perpetual injunctions and accountings against said defendants; and

Whereas, Licensee recognizes and admits the validity and scope of said Utzman patents and admits that Licensee has heretofore infringed upon the same, and that Licensor has a substantial claim against Licensee for damages and profits because and on account of said infringement, and both Licensor and Licensee have expended or will be compelled to expend large sums of money in patent litigation in respect of said infringement, and such litigation has been, or will be otherwise costly and expensive to both of said parties who are therefore desirous of making

a full and complete settlement of their controversies and of avoiding further litigation; and

Whereas, the parties hereto have agreed to settle said claim by the payment to the Licensor by the Licensee, of a sum of money in cash and an amount equivalent to five per cent. (5%) of Beaver Company's selling price of all plaster board or gypsum wallboard manufactured and sold by it until August 6, 1929, and one and one-half per cent. (1½%) of such selling price from August 6, 1929 to February 10, 1937, and the assignment to Licensor of certain Letters Patent and applications for Letters Patent, and the granting of this License to the Licensee.

Now, therefore, in consideration of the sum of One Dollar ($1.00) and other good and valuable considerations, the receipt whereof is hereby acknowledged, the parties hereto do hereby agree as follows, to wit:

9214 1. Licensor has agreed to and does hereby give and grant unto Licensee, an indivisible and non-exclusive right, license and privilege of using the processes, and making and using the machines and/or inventions set forth and claimed in said Utzman Patents, and in any and all of said patents or applications for letters patent described in said Exhibit "A", at any and all factories now or hereafter owned and/or operated or controlled by Licensee or any subsidiary, associated or affiliated company, and of manufacturing at any such place or places, selling and/or using plaster board or gypsum wallboard embodying the inventions and improvements set forth and claimed in said Utzman patents and said patents and applications for letters patent described in Exhibit "A", until the 10th day of February, 1937, the date of expiration of Patent No. 1,330,413, mentioned in said Exhibit "A".

It is expressly agreed and understood that the indivisible and non-exclusive right, license and privilege aforesaid is granted upon condition that the Licensor shall have, and it hereby reserves the right to determine and fix at any time, and to change from time to time during the term of said Utzman Patent number 1,034,746 the minimum price or prices (not more, however, than the then prevailing market price or prices) at which the Licensee shall sell any plaster board or gypsum wallboard manufactured by Licensee embodying the improvements set forth and claimed in said Utzman Patent number 1,034,746, and in case it shall exercise the right so reserved it shall first serve written notice

of its intention so to do upon Licensee, accompanied with a statement of the price or prices at which the Licensee shall sell said patented product, and thereafter shall give to the Licensee written or telegraphic notice of any
9215 change in such price or prices, and the Licensee expressly covenants and agrees that it will not at any time during the term of said Utzman Patent number 1,034,746, after the receipt of such notice, directly or indirectly sell or offer for sale, any plaster board or gypsum wallboard embodying the improvements set forth and claimed in said Utzman Patent number 1,034,746 at a price or prices less than that stated by the Licensor in said notice, or in any such written or telegraphic notice of a change in such price or prices. It is expressly understood and agreed that this provision of the said License shall apply only to the said Utzman Patent number 1,034,746, and shall not apply to any of said other Letters Patent.

2. The Licensee further agrees to pay to the Licensor, in settlement and discharge of the said claim, and for the right, license and privilege of manufacturing, using and/or selling plaster board or gypsum wallboard, and for the privilege of using the processes and making and using the machines and/or inventions, embodying the inventions and improvements set forth and claimed in said Utzman Patents and in any and all of said patents and applications for letters patent described in Exhibit "A", an amount (hereinafter for convenience referred to as a license fee or royalty) equivalent to five per cent. (5%) of the selling price of the Licensee, of all plaster board or gypsum wallboard of every kind, manufactured and sold by Licensee between the date hereof and August 6, 1929, the date of the expiration of said Utzman Patent No. 1,034,746, and thereafter an amount equivalent to one and one-half per cent. (1½%) of the selling price of the Licensee, of all such plaster board or gypsum wallboard, from August 6, 1929 until February 10, 1937, the date of the expiration of said patent No. 1,330,413.

9216 3. It is expressly understood and agreed that the said License shall be personal to the Licensee and that the same or any right therein or thereunder shall not be sold, assigned or transferred without the written consent of the Licensor or transferred by operation of law, except that the same may be assigned to any successor or subsidiary corporation of Licensee, and except that in the event of

the appointment of a receiver or receivers for the purpose of conserving the business and assets of Licensee, such receiver or receivers shall succeed to all of Licensee's rights under said License and under this agreement.

4. Licensee agrees to keep separate, full and accurate books of account and records showing the exact quantity of all plaster board and gypsum wallboard manufactured and sold by it, and agrees that on or before the 20th day of each and every calendar month it will render unto Licensor true written returns, verified under oath by an officer or other agent of Licensee, setting forth the quantity of all plaster board and gypsum wallboard manufactured and sold by it during the preceding calendar month, together with the price or prices at which the same was sold, such written returns to be delivered to Licensor at its office in Chicago, Illinois, and Licensee agrees to pay to Licensor, on or before the 20th day of each calendar month, at the office of Licensor at Chicago, Illinois, the hereinbefore stipulated royalties or license fees which may then be due under this agreement on account of all of said plaster board and gypsum wallboard manufactured and sold by it during the next preceding calendar month.

5. Licensor, or its duly authorized representative shall have the right at all reasonable times during busi-
9217 ness hours to inspect the books of account and records of Licensee referred to in the next preceding paragraph hereof, including all records of every kind showing the quantity of said plaster board and gypsum wallboard manufactured and sold by it, the price or prices at which the same was sold, and to make copies thereof and memoranda therefrom.

6. Licensee agrees that all plaster board or gypsum wallboard manufactured and sold by it embodying the claims of any of said patents shall be distinctly marked with the word "Patented", together with the dates of the Utzman patents, and the dates of any other patents which Licensor may properly specify, and in connection with the said markings it will further mark said patented product with the words "Licensed under the above Letters Patent", which markings shall be plainly visible.

7. Having regard for the fact that there are or may be certain manufacturers of plaster or gypsum products who do not or may not manufacture gypsum wallboard or plas-

ter board but who desire or may desire to have gypsum wallboard or plaster board manufactured for them, it is understood and agreed that Licensee may manufacture gypsum wallboard or plaster board embodying the inventions and improvements set forth and claimed in said Letters Patent, for any such other manufacturer; provided, however, that the said license fee or royalty to be paid to Licensor as hereinbefore provided shall be based upon all gypsum wallboard or plaster board manufactured for such other manufacturer and upon the regular selling price of
Licensee of such plaster board or gypsum wallboard
9218 to its regular dealer trade at the time of such sale,
and shall not be based upon the price at which plaster board or gypsum wallboard is sold by Licensee to such other manufacturer.

8. Licensee expressly covenants and agrees that all of said patented product sold by it and commonly known in the trade as "seconds" shall be plainly invoiced as seconds and shall be plainly marked with a visible red stamp or label firmly fixed on each of said boards showing the word "seconds" in letters at least three inches in height.

9. It is expressly understood and agreed that the patented product manufactured and sold hereunder shall include all board having a protected edge, it being recognized by the parties hereto that any board manufactured by Licensee having a protected edge is within the scope of said Utzman patents Nos. 1,029,328 and 1,034,746.

After the expiration of said Letters Patent No. 1,034,746 and until the expiration of Letters Patent No. 1,330,413, it is expressly understood and agreed that the patented product manufactured and sold hereunder shall include all board having a protected edge, the parties hereto agreeing hereby that any and all board having a protected edge is within the claims or is manufactured according to the processes or by the use of machines embodying the claims either of said Letters Patent No. 1,330,413, or of one or more of the other of said letters patent listed in Exhibit "A" hereto, under which the aforesaid indivisible and non-exclusive right, license and privilege is granted.

10. As one of the considerations for the indivisible and non-exclusive license herein and hereby granted, Li-
9219 censee hereby acknowledges the validity of the Letters Patent, granted and to be granted, forming the subject-matter of this license, throughout the respective

lives of the said Letters Patent and each of them, and agrees that it will not at any time before or after the expiration or termination of this license, directly or indirectly, by itself, through or together with another or others, contest the validity of either or any of said Letters Patent or the title thereto of Licensor, or question in any way the prima facie scope of either or any of said Letters Patent, or the priority, novelty or patentability of the subject-matter of any of the said applications for letters patent.

11. In the event that Licensee shall at any time neglect, fail or refuse to keep or perform any of the conditions and agreements herein to be by Licensee kept and performed, then Licensor, at its election, may serve upon Licensee notice of intention to terminate the license herein granted, which notice shall specify the alleged neglect, failure or refusal; and if, within thirty (30) days from the date of delivery of said notice, Licensee shall not keep or perform the conditions and agreements specified in said notice, then said license and all rights acquired by Licensee hereunder shall be and become cancelled and terminated without the necessity of any court action; provided, however, that Licensee shall not be relieved thereby from paying to Licensor any license fees or royalties or any other obligations accrued hereunder at the time of such termination. In case at any time Licensee shall commit any act of bankruptcy, then the license hereunder shall immediately be and become cancelled and terminated, but Licensor
9220 shall not thereby be prevented from collecting all license fees or royalties and other obligations accrued hereunder at the time of such termination. Failure on the part of Licensor to notify Licensee of a breach of this license contract or to terminate said license because of such breach shall not constitute a waiver of Licensor's right to terminate said license in accordance with the provisions of this paragraph. Licensor may specifically enforce this contract or any of the terms, conditions and covenants hereof, by injunction or in such other manner as may be provided by law.

12. Any notice to be given under the terms hereof may be served upon the Licensee by mailing the same to the Licensee, postage prepaid, addressed to it at its last known principal office, and the deposit of any such notice in the United States mails, postage prepaid and so addressed, shall constitute service of said notice upon the Licensee.

13. It is understood and agreed that if at any time during the term hereof the Licensee shall, in the judgment of the Licensor, suffer substantial detriment by reason of any infringement upon the part of any person or persons of the said patents, whether now or hereafter issued, under which this license is granted, the Licensor will afford the Licensee such reasonable protection as in the judgment of the Licensor shall be necessary or proper; and in case the Licensor shall grant to any such infringer, or to any other person, any license under said patents upon terms more favorable than these granted hereunder to this Licensee, then it will grant to this Licensee a license on the same terms.

14. The terms "plasterboard" and "gypsum wall board" shall be understood to mean all board by whatever
9221 name called having the structural characteristics of plasterboard or gypsum wallboard, irrespective of the purpose for which the same may be sold or used.

15. This license and all of the coverants and agreements hereof shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto, but nothing in this paragraph shall be construed to permit an assignment hereof by the Licensee except as hereinabove specifically provided.

In witness whereof, the parties hereto have caused these presents to be signed by their respective Presidents, attested by their respective Secretaries, and their corporate seals to be hereunto affixed, in duplicate, the day and year first above written.

UNITED STATES GYPSUM COMPANY,

By ——— ———, *Its President.*

Attest:

———— ———, *Secretary.*

THE BEAVER PRODUCTS COMPANY, INC.,

By ——— ———, *Its President.*

Attest:

———— ———, *Secretary.*

9222 *Government's Exhibit No. 2*

LICENSE AGREEMENT

This agreement executed in duplicate this 17th day of September 1926, by and between the United States Gypsum Company, an Illinois corporation, of Chicago, Illinois, hereinafter referred to as "Licensor" and the Universal Gypsum & Lime Co., a Delaware corporation, with its principal business office in the City of Chicago, State of Illinois, hereinafter referred to as "Licensee," witnesseth,

Whereas, Licensor is the owner of the entire right, title and interest in, to and under Letters Patent of the United States, Number 1,029,328, dated June 11th, 1912 and Number 1,034,746, dated August 6th, 1912, (hereinafter called the "Utzman Patents"), and is also the owner of the entire right, title and interest in, to and under the Letters Patent and applications for Letters Patent of the United States set forth in Exhibit "A" attached hereto and made a part hereof, and any and all Letters Patent which may be granted therefor or thereupon; and

Whereas, heretofore said Utzman patents have been adjudicated by the United States District Court for the Northern District of Illinois, Eastern Division, and by the United States Circuit Court of Appeals for the Seventh Circuit (258 Fed. 647; 270 Fed. 542; 290 Fed. 798; 290 Fed. 800; see also 263 U. S. 713), and said courts have decreed that said Utzman patents are valid and were infringed by the defendants in the cases so reported, and in the decision of the said District Court rendered on or about July 21, 1925, and not yet reported, by reason of the making, using and selling of plaster board or gypsum wallboard having protected edges, and said District
9223 Court has ordered perpetual injunctions and accountings against said defendants; and

Whereas, Licensee recognizes and admits the validity and scope of said Utzman patents insofar only as they cover plaster board and/or gypsum wallboard, and admits that Licensee has heretofore infringed upon the same, and that Licensor has a substantial claim against Licensee for damages and profits because and on account of said infringement, and both Licensor and Licensee have expended or will be compelled to expend large sums of money in patent litigation in respect of said infringement, and such

litigation has been, or will be otherwise costly and expensive to both of said parties who are therefore desirous of making a full and complete settlement of their controversies and of avoiding further litigation; and

Whereas, the parties hereto have agreed to settle said claim by the payment to the Licensor by the Licensee, of a sum of money and an amount equivalent to five per cent. (5%) of Licensee's selling price of all plaster board or gypsum wallboard manufactured and sold by it until August 6, 1929, and one and one-half per cent (1½%) of such selling price from August 6, 1929 to February 10, 1937 as hereinafter provided in paragraph numbered 2 of this agreement, and the granting of this license to the Licensee for the consideration expressed in said paragraph numbered 2;

Now, therefore, in consideration of the sum of One Dollar ($1.00) and other good and valuable considerations, the receipt whereof is hereby acknowledged, the parties hereto do hereby agree as follows, to-wit:

1. Licensor has agreed to and does hereby give and grant unto Licensee, an indivisible and non-exclusive
9224 right, license and privilege of using the processes, and making and using the machines and/or inventions set forth and claimed in said Utzman patents, and in any and all of said patents or applications for letters patent described in said Exhibit "A", at any and all factories now or hereafter owned and/or operated or controlled by Licensee or any subsidiary, associated or affiliated company, and of manufacturing at any such place or places plaster board and/or gypsum wallboard embodying the inventions and improvements set forth and claimed in said Utzman patents and said patents and applications for letters patent described in Exhibit "A", and of selling and/or using such plaster board and/or gypsum wallboard so manufactured, until the 10th day of February, 1937, the date of expiration of Patent Number 1,330,413, mentioned in said Exhibit "A".

It is expressly agreed and understood that the indivisible and non-exclusive right, license and privilege aforesaid is granted upon condition that the Licensor shall have, and it hereby reserves the right to determine and fix at any time, and to change from time to time during the term of said Utzman Patent Number 1,034,746 the minimum price or prices (not more, however, than the then prevailing market price or prices) at which the Licensee shall sell any

plaster board or gypsum wallboard manufactured by Licensee embodying the improvements set forth and claimed in said Utzman Patent Number 1,034,746, and in case it shall exercise the right so reserved it shall first serve written notice of its intention so to do upon Licensee, accompanied with a statement of the price or prices at which the Licensee shall sell said patented product, and thereafter shall give to the Licensee written or telegraphic notice of any change in such price or prices, and the Licensee expressly covenants and agrees that it will not be at
9225 any time during the terms of said Utzman Patent Number 1,034,746, after the receipt of such notice, directly or indirectly sell or offer for sale, any plaster board or gypsum wallboard embodying the improvements set forth and claimed in said Utzman Patent Number 1,034,746, at a price or prices less than that stated by the Licensor in said notice, or in any such written or telegraphic notice of a change in such price or prices. It is expressly understood and agreed that this provision of the said license shall apply only to the said Utzman Patent Number 1,034,746, and shall not apply to any of said other Letters Patent.

2. The Licensee has agreed, and does hereby agree, to pay to the Licensor, in settlement and discharge of the said claim, and for the right, license and privilege of manufacturing, using and/or selling plaster board or gypsum wallboard, and for the privilege of using the processes and making and using the machines and/or inventions embodying the inventions and improvements set forth and claimed in said Utzman patents and in any and all of said patents and applications for letters patent described in Exhibit "A", an amount (hereinafter for convenience referred to as a license fee or royalty) equivalent to five per cent. (5%) of the selling price of the Licensee, of all plaster board or gypsum wallboard of every kind, manufactured and sold by Licensee between the date hereof and August 6, 1929, the date of the expiration of said Utzman Patent Number 1,034,746, and thereafter an amount equivalent to one and one-half per cent. (1½%) of the selling price of the Licensee, of all such plaster board or gypsum wallboard, from August 6, 1929, until February 10, 1937, the date of the expiration of said Patent Number 1,330,413.

3. It is expressly understood and agreed that the said license shall be personal to the Licensee and that the same

or any right therein or thereunder shall not be sold,
9226 assigned or transferred without the written consent of the Licensor or transferred by operation of law, except that the same may be assigned to any successor or subsidiary corporation of Licensee, and except that in the event of the appointment of a receiver or receivers for the purpose of conserving the business and assets of Licensee, such receiver or receivers shall succeed to all of Licensee's rights under said license and under this agreement.

4. Licensee agrees to keep separate, full and accurate books of account and records showing the exact quantity of all plaster board and gypsum wallboard manufactured and sold by it, and agrees that on or before the 20th day of each and every calendar month it will render unto Licensor true written returns, verified under oath by an officer or other agent of Licensee, setting forth the quantity of all plaster board and gypsum wallboard manufactured and sold by it during the preceding calendar month, together with the price or prices at which the same was sold and invoiced, such written returns to be delivered to Licensor at its office in Chicago, Illinois, and Licensee agrees to pay to Licensor, on or before the 20th day of each calendar month, at the office of Licensor at Chicago, Illinois, the hereinbefore stipulated royalties or license fees which may then be due under this agreement on account of all of said plaster board and gypsum wallboard sold and invoiced by it during the next preceding calendar month.

5. Licensor, or its duly authorized representative, shall have the right at all reasonable times during business hours to inspect the books of account and records of Licensee referred to in the next preceding paragraph hereof, including all records of every kind showing the quantity
9227 of said plaster board and gypsum wallboard manufactured and sold by it, the price or prices at which the same was sold, and to make copies thereof and memoranda therefrom.

6. Licensee agrees that all plaster board or gypsum wallboard manufactured and sold by it embodying the claims of any of said patents shall be distinctly marked with the word "Patented", together with the dates of the Utzman patents, and the date of any other patents which Licensor may properly specify, and in connection with the said markings it will further mark said patented product with the words "Licensed under the above Letters Patent", which markings shall be plainly visible.

7. Having regard for the fact that there are or may be certain manufacturers of plaster or gypsum products, or jobbers of such products, who do not or may not manufacture gypsum wallboard or plaster board but who desire or may desire to have gypsum wallboard or plaster board manufactured for them, it is understood and agreed that Licensee may manufacture gypsum wallboard or plaster board embodying the inventions and improvements set forth and claimed in said Letters Patent, for any such other manufacturer and/or jobber; provided, however, that the said license fee or royalty to be paid to Licensor as hereinbefore provided shall be based upon all gypsum wallboard or plaster board manufactured for, and sold and invoiced to, such other manufacturer and/or jobber and upon the regular selling price of Licensee of such plaster board or gypsum wallboard to its regular dealer trade at the time of such sale and invoice, and shall not be based upon the price at which plaster board or gypsum wallboard is sold and invoiced by Licensee to such other manufacturer or jobber.

8. Licensee expressly covenants and agrees that all of said patented product sold by it and commonly
9228 known in the trade as "seconds" shall be plainly invoiced as seconds and shall be plainly marked with a visible red stamp or label firmly fixed on each of said boards showing the word "seconds" in letters at least three inches in height.

9. It is expressly understood and agreed that the patented plaster board and/or gypsum wallboard manufactured and sold hereunder shall include all such board having a protected edge, it being recognized by the parties hereto that any such board manufactured by Licensee having a protected edge is within the scope of said Utzman Patents Numbers 1,029,328 and 1,034,746.

After the expiration of said Letters Patent Number 1,034,746 and until February 10, 1937, the date of the expiration of Letters Patent Number 1,330,413, it is expressly understood and agreed that the patented plaster board and/or gypsum wallboard manufactured and sold hereunder shall include all such board having a protected edge, and that any and all such board having a protected edge is within the claims or is manufactured according to the processes or by the use of machines embodying the claims either of said Letters Patent Number 1,330,413, or of one

or more of the other of said letters patent listed in Exhibit "A" hereto, under which the aforesaid indivisible and non-exclusive right, license and privilege is granted.

10. As one of the considerations for the indivisible and non-exclusive license herein and hereby granted, Licensee hereby acknowledges only until February 10, 1937, the date of the expiration of the said Letters Patent Number 1,330,413, the validity of the aforesaid Utzman patents and all of the said Letters patent, granted and to be granted on applications for patents specified in Exhibit "A", and only insofar as each and every of said Letters Patent relate to plaster board and/or gypsum wallboard, and agrees that it will not at any time prior to February 10, 1937,
9229 the date of the expiration of said Letters Patent Number 1,330,413, whether before or after the termination of this license, insofar only as they relate to plaster board and/or gypsum wallboard, directly or indirectly, by itself, through or together with another or others, contest the validity of either or any of said Letters Patent or the title thereto of Licensor, or question in any way the prima facie scope of either or any of said Letters Patent; but it is expressly understood that the Licensee shall have full right to contest the priority, novelty or patentability of the subject matter of any and all of the claims of the applications for letters patent specified in Exhibit "A" in accordance with customary patent office procedure to the same extent as though this agreement had never been entered into.

11. In the event that Licensee shall at any time neglect, fail or refuse to keep or perform any of the conditions and agreements hereinafter in this paragraph specified to be by Licensee kept and performed, then Licensor, at its election, may serve upon Licensee notice of intention to terminate the license herein granted, which notice shall specify the alleged neglect, failure or refusal; and if Licensee, within thirty (30) days from the date of the delivery of said notice, shall not have paid to Licensor the license fees or royalties then due and payable in accordance with the terms hereof if specified in said notice; or within such thirty (30) day period shall not have made and kept the books of account and records hereinbefore mentioned if specified in said notice; or within such thirty (30) day period shall not have permitted Licensor to examine said books of account and records as hereinbefore pro-

vided if specified in said notice; or within thirty (30)
9230 days after receipt of such notice shall not have
marked said plaster board or gypsum wallboard manufactured by it subsequent to the receipt of such notice "Patented", with the dates of the patents, or marked or invoiced the same as "seconds", as hereinbefore provided if specified in said notice; or shall, after the receipt of such notice, fail in good faith to comply with the conditions contained in paragraph 1 hereof, in the sale of plaster board and/or gypsum wallboard embodying the improvements set forth and claimed in said Utzman Patent Number 1,034,746, in case Licensor shall exercise the right therein reserved by it, if specified in said notice, then in either of such events the said license and all rights acquired by Licensee hereunder shall be and become cancelled and terminated without the necessity of any court action; provided, however that Licensee shall not be relieved thereby from paying to Licensor any license fees or royalties accrued hereunder at the time of such termination; and provided further that should a difference of opinion arise at any time under this agreement between the parties hereto as to the validity of the grounds for any default that may be specified in said notice, the Licensor shall in such case not be privileged to declare a default hereunder on account of any such alleged default specified in said notice with respect to which a difference of opinion has arisen as aforesaid, until and unless the same has first been settled by arbitration as hereinafter provided. In such case of a difference of opinion, Licensee shall, within said thirty (30) day period, first state in writing to Licensor wherein and in what respect such difference of opinion shall consist and shall at the same time appoint in writing one person as an arbitrator and the Licensor shall thereupon appoint another person as an arbitrator and in case the two persons so appointed shall not agree, within thirty (30) days after such appointment, upon the difference of
opinion which shall have arisen, then the two per-
9231 sons so appointed shall appoint a third person, and the decision of a majority of the three arbitrators so appointed shall constitute a final settlement of the said difference of opinion and be binding upon both the Licensor and the Licensee; provided, further, that in case the difference of opinion above mentioned shall constitute a difference of opinion as to the amount of the royalties or license fees to be paid hereunder then the Licensee shall first pay or offer to pay the amount of such license fees or

royalties which it then admits is due and payable in accordance with the terms hereof and the acceptance thereof by the Licensor shall not waive its rights in the controversy with respect thereto. Upon the determination of the said dispute by the said arbitrators as aforesaid, then if the Licensee shall fail or refuse to comply with the terms of the award or finding made by the said arbitrators within thirty (30) days from the date of such award or finding, in the event such award or finding is against the Licensee, then the Licensor may at its election terminate and cancel this license. In the event of default hereunder by the Licensee and notice of such default is served on Licensee by Licensor as herein provided, and after service of such notice Licensee shall cure such default as herein provided, the same shall constitute a nullification of the said notice by the Licensor as though the same had not been served. In case at any time Licensee shall commit any act of bankruptcy then the license hereunder shall immediately be and become cancelled and terminated, but Licensor shall not thereby be prevented from collecting all license fees or royalties accrued hereunder at the time of such termination. Failure on the part of Licensor to notify Licensee of a breach of this license contract as aforesaid or to terminate said license because of such breach shall not constitute a waiver of Licensor's right to terminate said
9232 license at a later time in accordance with the provisions of this paragraph. Licensor may specifically enforce this contract or any of the terms, conditions and covenants hereof, by injunction or in such other manner as may be provided by law.

12. Any notice to be given under the terms hereof may be served upon the Licensee by mailing the same to the Licensee postage prepaid and duly registered, addressed to it at its last known principal office, and the deposit of any such notice in the United States mails, registered and postage prepaid and so addressed, shall constitute service of said notice upon the Licensee.

13. It is understood and agreed that if at any time during the term hereof the Licensee shall, in the judgment of the Licensor, suffer substantial detriment by reason of any infringement upon the part of any person or persons of the said patents, whether now or hereafter issued, under which this license is granted, by the manufacture, use and/or sale of plaster board and/or gypsum wallboard, the Licensor will afford the Licensee such reasonable protection as in

the judgment of the Licensor shall be necessary or proper; and in case the Licensor shall grant to any such infringer, or to any other person, any license or licenses under said patents for the manufacture, use and/or sale of plaster board and/or gypsum wallboard wherein the royalties or license fees are more favorable than those granted hereunder to this Licensee, then the royalties or license fees hereunder shall be automatically reduced for all plaster board and/or gypsum wallboard thereafter sold, to the basis fixed in such other license or licenses for the term or terms of any such other license or licenses, but not to exceed the term of this license.

9233 14. The terms "plaster board" and "gypsum wallboard" wherever used in this agreement, shall be understood to mean plaster board and gypsum wallboard of every kind having the structural characteristics of plaster board or gypsum wallboard, as now commercially recognized, and with fibrous or paper covering on or adjacent to both sides, but the terms shall not be construed to mean precast slabs manufactured from Insulex or other gypsum mixtures that are more than one and one-half (1½) inches in thickness and which do not have a protected edge either in whole or in part.

15. This license and all of the covenants and agreements hereof shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto, but nothing in this paragraph shall be construed to permit an assignment hereof by the Licensee except as hereinabove specifically provided.

In witness whereof, the parties hereto have caused these presents to be signed by their respective Presidents, attested by their respective Secretaries, and their corporate seals to be hereunto affixed, in duplicate, the day and year first above written.

UNITED STATES GYPSUM COMPANY

By C. F. HENNING, *Its Vice-President.*

Attest:

P. G. BEAR, *Secretary.*

UNIVERSAL GYPSUM & LIME CO.

By W. E. SHEARER, *Its President.*

Attest:

C. F. KALER, *Secretary.*

Utzman patent No. 1,330,413. Application filed September 3, 1918, granted February 10, 1920, expires February 10, 1937.

Birdsey patent No. 1,358,508. Application filed January 2, 1920, granted November 9, 1920, expires November 9, 1937.

Utzman patent No. 1,383,249. Application filed August 13, 1918, granted June 28, 1921, expires June 28, 1938.

Birdsey patent No. 1,383,254. Application filed July 29, 1918, granted June 28, 1921, expires June 28, 1938.

Birdsey patent No. 1,383,255. Application filed January 2, 1920, granted June 28, 1921, expires June 28, 1938.

Birdsey patent No. 1,384,298. Application filed August 19, 1920, granted July 12, 1921, expires June 12, 1938.

Birdsey patent No. 1,395,031. Application filed January 2, 1920, granted October 25, 1921, expires October 25, 1938.

Birdsey patent No. 1,395,032. Application filed January 2, 1920, granted October 25, 1921, expires October 25, 1938.

Birdsey patent No. 1,406,967. Application filed January 3, 1921, granted February 21, 1922, expires February 21, 1939.

Birdsey patent No. 1,427,939. Application filed January 3, 1921, granted September 5, 1922, expires September 5, 1939.

Birdsey patent No. 1,428,624. Application filed January 2, 1920, granted September 12, 1922, expires September 12, 1939.

Brookby patent No. 1,489,693. Application filed September 25, 1922, granted April 8, 1924, expires April 8, 1941.

Birsdey patent No. 1,514,827. Application filed October 6, 1921, granted November 11, 1924, expires November 11, 1941.

Birdsey patent No. 1,515,380. Original application filed January 2, 1920, granted November 11, 1924, expires November 11, 1941.

Birdsey patent No. 1,518,243. Application filed September 22, 1922, granted December 9, 1924, expires December 9, 1941.

9235 Birdsey patent No. 1,525,715. Application filed January 2, 1920, granted February 10, 1925, expires February 10, 1942.

Birdsey patent No. 1,526,307. Application filed October 10, 1921, granted February 10, 1925, expires February 10, 1942.

Utzman patent No. 1,540,045. Application filed March 14, 1923, granted June 2, 1925, expires June 2, 1942.

Birdsey patent No. 1,558,459. Application filed October 4, 1922, granted October 27, 1925, expires October 27, 1942.

Birdsey patent No. 1,561,635. Application filed January 3, 1921, granted November 17, 1925, expires November 17, 1942.

Birdsey application Serial No. 437,062 filed January 13, 1921.

Birdsey application Serial No. 506,676, filed October 10, 1921.

Birdsey application Serial No. 545,231, filed March 20, 1922.

Birdsey application Serial No. 555,627, filed April 19, 1922.

Birdsey application Serial No. 583,795, filed August 23, 1922.

Moore application Serial No. 590,356, filed September 25, 1922.

Knode application Serial No. 590,358, filed September 25, 1922.

Birdsey application Serial No. 605,896, filed December 9, 1922.

Smith application Serial No. 662,359, filed September 12, 1923.

Birdsey application Serial No. 737,237, filed September 12, 1924.

Utzman application Serial No. 750,224, filed November 17, 1924.

Birdsey application Serial No. 754,927, filed December 10, 1924.

Brookby application Serial No. 50,538, filed August 17, 1925.

9236 Birdsey application Serial No. 57,507, filed September 21, 1925.

Brookby & Absmeier application Serial No. 91,297 filed March 1, 1926.

Armstrong patent No. 1,278,821. Application filed January 4, 1918, granted September 17, 1918, expires September 17, 1935.

Armstrong patent No. 1,348,387. Application filed March 15, 1919, granted August 3, 1920, expires August 3, 1937; application for reissue filed June 3, 1922, Serial 565,737.

Armstrong patent No. 1,367,282. Application filed July 12, 1919, granted February 1, 1921, expires February 1, 1938; application for reissue filed June 9, 1922, Serial 567,205.

Utzman patent No. 1,455,127. Application filed June 14, 1922, granted May 15, 1923, expires May 15, 1940.

Utzman patent No. 1,492,588. Application filed June 14, 1922, granted May 6, 1924, expires May 6, 1941.

Williams patent No. 1,519,180. Application filed August 18, 1922, granted December 16, 1924, expires December 16, 1941.

Armstrong patent No. 1,556,575. Application filed October 1, 1921, granted October 13, 1925, expires October 13, 1942.

Armstrong patent No. 1,399,455. Application filed February 24, 1920, granted December 6, 1921, expires December 6, 1938.

Tyler patent No. 1,417,117. Application filed November 15, 1919, granted May 23, 1922, expires May 23, 1939.

Armstrong application Serial No. 310,470 filed July 12, 1919.

Utzman application Serial No. 374,833 filed April 19, 1920.

Armstrong application Serial No. 377,421, filed April 29, 1920.

Speer application Serial No. 427,044, filed November 29, 1920.

Speer application Serial No. 427,045, filed November 29, 1920.

Mehlhope application Serial No. 473,288, filed May 28, 1921.

9237 Utzman application Serial No. 477,371, filed June 14, 1921.

Kohler application Serial No. 482,073, filed July 2, 1921.

Gustafson application Serial No. 509,366, filed December 2, 1919; renewed October 21, 1921.

Kohler, et al., application Serial No. 540,412, filed March 2, 1922.

Armstrong application Serial No. 565,737, filed June 3, 1922.

Armstrong application Serial No. 567,205, filed June 9, 1922.

Utzman application Serial No. 581,361, filed August 12, 1922.

Utzman application Serial No. 581,362, filed August 12, 1922.

Williams application Serial No. 582,606, filed August 18, 1922.

Tonning application Serial No. 590,221, filed September 25, 1922.

Armstrong application Serial No. 596,983, filed October 26, 1922.

Speer application Serial No. 610,739, filed January 5, 1923.

Rehm application Serial No. 8,654, filed February 12, 1925.

Rehm application Serial No. 8,655, filed February 12, 1925.

Rehm application Serial No. 8,656, filed February 12, 1925.

Rehm application Serial No. 8,657, filed February 12, 1925.

Rehm application Serial No. 23,775, filed April 17, 1925.

9238 *Government's Exhibit No. 3*

UNITED STATES GYPSUM COMPANY

300 West Adams Street

CHICAGO

JUNE 13, 1929.

MR. M. H. BAKER

National Gypsum Company,

Buffalo, N. Y.

DEAR SIR: To the license agreement between you and the United States Gypsum Company, executed May 16, 1929, is affixed an "Exhibit A" which is a list of United States patents and patent applications. This list was prepared in 1926, a duplicate thereof being attached to a similar agreement executed at that time. Since 1926, however, the status of a number of the patents and applications listed has changed in that two of the patents enumerated have been reissued, a number of the applications listed have since matured into issued patents; certain of the applications are still pending and the remainder have lapsed and hence are not in the list.

In order to bring the list up to date by giving effect to these changes, we have rewritten "Exhibit A" and enclose copy of the same herewith. Will you please substitute the enclosed for "Exhibit A" which is at present affixed to the aforesaid license agreement and advise us that you have done so, returning the old exhibit to us for cancellation.

The Federal Statutes relating to patents have recently been amended to require that in marking an article manufactured under a patent the number of the patent should be given. Will you please, therefore, in marking your product covered by the license, include also the number of each patent with the date thereof, as is now provided for in the license agreement, or if you prefer use only the patent number?

Very truly yours,

S. L. AVERY, *President.*

Certified a true copy of the original

T. E. DAVIS,
Sec'y, National Gypsum Co.

9239 LICENSE AGREEMENT

This agreement executed in duplicate this 16th day of May, 1929, by and between the United States Gypsum Company, an Illinois corporation of Chicago, Illinois, hereinafter referred to as "Licensor" and National Gypsum Company, a Delaware corporation, having its principal office at Buffalo, New York, hereinafter referred to as "Licensee," witnesseth:

Whereas, Licensor is the owner of the entire right, title and interest in, to and under Letters Patent of the United States, No. 1,029,398, dated June 11th, 1912, and No. 1,034,746, dated August 6th, 1912 (hereinafter called the "Utzman Patents"), and Letters Patent of the United States, No. 1,358,508, dated November 9, 1920 (hereinafter called the "Birdsey Patent"), and is also the owner of the entire right, title and interest in, to and under the Letters Patent and applications for Letters Patent of the United States set forth in Exhibit "A" attached hereto and made a part hereof, and any and all Letters Patent which may be granted therefor or thereupon; and

Whereas, heretofore said Utzman Patents have been adjudicated by the United States District Court for the Northern District of Illinois, Eastern Division, and by the United States Circuit Court of Appeals for the Seventh Circuit (258 Fed. 647; 270 Fed. 542; 290 Fed. 798; 290 Fed. 800; 15 Fed. (2d) 704; see also 263 U.S. 713), and said courts have decreed that said Utzman Patents are valid and were infringed by the defendants named in said suits, by reason of their making, using and selling plasterboard or gypsum wallboard having protected edges, and said District Court ordered perpetual injunctions and accountings against said defendants; and

9240 Whereas, said Birdsey Patent number 1,358,508 has been adjudicated by the United States District Court for the Northern District of Ohio (in Equity number 1621), and said court has decreed that said Birdsey patent is valid and was infringed by Defendant in said cause by reason of its making, using and selling plasterboard and/or gypsum wallboard having edges of the character disclosed in said patent, and said District Court ordered a perpetual injunction and accounting against Defendant which cause is now pending on appeal before the United States Circuit Court of Appeals for the Sixth Circuit (Appeal number 5392); and

Whereas, Licensor has a substantial claim against Licensee for damages and profits because and on account of alleged infringements of patents; and

Whereas, Licensor has agreed to grant a license to Licensee under said patents and to settle the said claim in consideration of the payment by the Licensee to Licensor of five per cent (5%) of Licensee's selling price of all plasterboard or gypsum wallboard manufactured and sold by it until August 6, 1929, and one and one-half per cent (1½%) of such selling price from August 6th, 1929, to February 10, 1937, plus three and one-half per cent (3½%) of such selling price from August 6, 1929 until said three and one-half per cent (3½%) of such selling price shall aggregate the sum of approximately one hundred Eighty Thousand Dollars ($180,000.00).

Now, therefore, in consideration of the sum of one dollar and other good and valuable considerations, receipt whereof is hereby acknowledged, the parties hereto do hereby agree as follows, to wit:

1. Licensor has agreed to and does hereby give and grant unto licensee, an indivisible and non-exclusive right, license and privilege of using the processes, and making and using the machine and/or inventions set forth
9241 and claimed in said Utzman Patents, and in any and all of said patents or applications for letters patent described in said Exhibit A, at the plant or factory now owned and/or operated by Licensee at Clarence, N. Y. and National City, Michigan, or at any other plant or factory hereafter owned or operated or controlled by it or any subsidiary, associated or affiliated company, and of manufacturing at said plant or factory and selling and/or using plasterboard or gypsum wallboard manufactured at said plant or factory and embodying the invention and improvements set forth and claimed in said Utzman Patents and said patents and applications for letters patent described in Exhibit A, until the 10th day of February, 1937, the date of expiration of patent number 1,330,413 mentioned in said Exhibit A, all subject to the terms and conditions hereinafter stated.

It is expressly understood and agreed that the indivisible and non-exclusive right, license and privilege aforesaid is granted upon condition that the Licensor shall have, and it hereby reserves the right to determine and fix at any time and to change from time to time during the term of said Utzman Patent number 1,034,746 the minimum price or

prices at which the Licensee shall sell any plasterboard or gypsum wallboard manufactured by Licensee embodying the improvement set forth and claimed in the said Utzman Patent 1,034,746, and in case it shall exercise the right so reserved it shall first serve written notice of its intention so to do upon Licensee accompanied with a statement of the price or prices at which the Licensee shall sell said patented product, and thereafter shall give to the Licensee written or telegraphic notice of any change in such price or prices, and the Licensee expressly covenants and agrees that it will not at any time during the term of said Utzman Patent number 1,034,746, after the receipt of such notice, directly or indirectly sell or offer for sale any plasterboard or gypsum wallboard embodying the improvements set
9242 forth and claimed in said Utzman Patent number 1,034,746 prior to the expiration thereof at a price or prices less than that stated by the Licensor in said notice or in any such written or telegraphic notice of a change in such price or prices.

2. The Licensee further agrees to pay to the Licensor in settlement and discharge of said claim and for the right, license and privilege of manufacturing, using and/or selling plasterboard or gypsum wallboard, and for the privilege of using the processes and making and using the machines and/or inventions embodying the inventions and improvements set forth and claimed in said Utzman Patents and in any and all of said patents and applications for letters patent described in Exhibit A, an amount (hereafter for convenience referred to as a license fee or royalty) equivalent to five per cent (5%) of the selling price of the Licensee of all plasterboard or gypsum wallboard of every kind, whether patented or unpatented, manufactured and sold by Licensee between the date hereof and August 6, 1929, the date of the expiration of said Utzman Patent number 1,034,746 and thereafter an amount equivalent to one and one-half per cent (1½%) of the selling price of the Licensee of all such plasterboard or gypsum wallboard from August 6, 1929, until February 10, 1937, the date of the expiration of said patent number 1,330,413, and in addition thereto an amount equivalent to three and one-half per cent (3½%) of the selling price of the Licensee of such plasterboard or gypsum wallboard from August 6, 1929, until said three and one-half per cent (3½%) of said selling price shall have aggregated the sum of approximately One Hundred Eighty Thousand Dollars ($180,000).

It is understood and agreed that if prior to the expiration of said license the Licensee shall not have paid
9243 to the Licensor said additional sum of approximately One Hundred Eighty Thousand Dollars ($180,000) over and above the said five per cent (5%) royalties between the date hereof and August 6, 1929, and the said one and one-half per cent (1½%) royalties from August 6, 1929, until February 10, 1937, the Licensee shall from the date of the expiration of said license pay to the Licensor five per cent (5%) of the selling price of the Licensee of all plasterboard or gypsum wallboard manufactured and sold by it until said sum of approximately One Hundred Eighty Thousand Dollars ($180,000) shall have been fully paid and satisfied.

It is expressly understood and agreed that this contract is executed without prejudice to Licensor to assert its said claim against Licensee for infringement of its said patents in case for any reason this contract shall not remain in force throughout the full term thereof and the Licensee shall not pay to the Licensor all of the sums of money herein agreed to be paid to it in accordance with the terms hereof, and it is further agreed that the claim of Licensor against Licensee for said infringement is not settled or discharged by the execution of this instrument, but shall only be settled and discharged by the full performance of this contract and the payment to Licensor of said sums of money. In case of the termination of this contract at any time prior to the expiration thereof or in the event of the failure of Licensee to make full payment to Licensor of all of said royalties or license fees, including said additional sum of approximately One Hundred Eighty Thousand Dollars ($180,000), in the manner herein specified, Licensor, shall have the same right which it now has or had prior to the execution of this instrument to recover of and from Licensee the full amount of its said claim for damage for infringement of its said patents, and nothing herein
9244 contained shall prevent the recovery by Licensor of all of its damages for such infringement against Licensee according to the full measure of damages allowed in such cases, the same as if this contract had never been made, less only such sums as shall have been paid by Licensee to Licensor since August 6, 1929, on account of said additional sum or amount of approximately One Hundred Eighty Thousand Dollars ($180,000.00). Upon the payment to Licensor of all of said royalties or license fees throughout the full term of said license plus said additional

sum of approximately One Hundred Eighty Thousand Dollars ($180,000.00) at the time and in the manner herein specified, then the said claim of Licensor against Licensee for infringement of its said patents shall thereupon be and become fully settled, discharged and satisfied.

3. It is further agreed that so long as this agreement shall remain in force between the parties hereto, or in case the license granted under paragraph 1 hereof shall continue until February 10, 1937, then until the expiration of the patent specifically described in this paragraph, the Licensor does hereby give and grant unto Licensee an indivisible and non-exclusive right, license and privilege of making and using the inventions set forth and claimed in that certain patent known as the Birdsey Plasterboard Bundle Patent number 1,696,877, dated December 25, 1928, at the plant or factory now owned and/or operated by Licensee at Clarence, N. Y., and National City, Michigan or at any other plant or factory hereafter owned or operated by it and of selling bundles of plasterboard and/or gypsum wallboard set forth and claimed in said patent number 1,696,877, upon the terms and conditions hereinafter stated.

The Licensee agrees to pay to the Licensor for the right, license and privilege of making, using, or selling the inventions set forth and claimed in said Patent number 1,696,877 in addition to the sums hereinabove set forth, a li-
9245 cense fee or royalty of ten cents (10¢) per thousand square feet of plasterboard and/or gypsum wallboard which is sold by it in bundles of any kind, payable at the times and in accordance with the terms of paragraph 5 hereof. It is expressly understood that licensee in its business of manufacturing and selling plasterboard and/or gypsum wallboard will use only said bundle set forth and claimed in said patent number 1,696,877 and will not use any other bundle or method of bundling plasterboard during the term of said license.

4. It is expressly understood and agreed that the license herein granted shall be personal to the Licensee and that the same or any right therein or thereunder shall not be sold, assigned or transferred without the written consent of the Licensor or transferred by operation of law.

It is expressly understood that the Licensee shall not discontinue its business of manufacturing and selling plasterboard and/or gypsum wallboard until the Licensor shall have received the full payment of all of the amounts agreed to be paid to it hereunder by the Licensee, nor shall this

license be assigned to any company or companies acquiring the capital stock or assets of Licensee, or to any company resulting from any merger or consolidation between Licensee and any other company, nor shall any such merger, consolidation or acquisition affect any claim which Licensor has against Licensee or against any such other company for infringement of its said patents; provided, however, that this license may, with the written consent of the Licensor, be assigned to any company holding a similar license from Licensor upon the express assumption by such company of all claims of Licensor against Licensee and of the agreements and obligations of the Licensee herein contained.

9246 5. Licensee agrees to keep separate, full and accurate books of account and records showing the exact quantity of all plasterboard and gypsum wallboard manufactured and sold by it, as well as a separate record of all plasterboard and/or gypsum wallboard sold by it in bundles, and agrees that on or before the 20th day of each and every calender month it will render unto Licensor true written returns, verified under oath by an officer or other agent of Licensee, setting forth the quantity of all plasterboard and gypsum wallboard manufactured and sold by it during the preceding calendar month, and the quantity thereof put up and sold by it in bundles, together with the price or prices at which the same was sold, such written returns to be delivered to Licensor at its office in Chicago, Illinois, and Licensee agrees to pay to Licensor, on or before the 20th day of each calendar month, at the office of Licensor at Chicago, Illinois, the hereinbefore stipulated royalties or license fees which may then be due under this agreement on account of all of said plasterboard and gypsum wallboard manufactured and sold by it during the next preceding calendar month.

6. Licensor, or its duly authorized representative, shall have the right at all reasonable times during business hours to inspect the books of account and records of Licensee referred to in the next preceding paragraph hereof, including all records of every kind showing the quantity of said plasterboard and gypsum wallboard manufactured and sold by it, and the quantity thereof put up and sold by it in bundles, the price or prices at which the same was sold, and to make copies thereof and memoranda therefrom.

7. Licensee agrees that all plasterboard or gypsum wall-

board manufactured and sold by it embodying the
9247 claims of any of said patents shall be distinctly
marked with the word "Patented", together with the dates of the Utzman Patents, and the dates of any other patents which Licensor may properly specify, and in connection with the said markings it will further mark said patented product with the words, "Licensed under the above Letters Patent," which markings shall be plainly visible.

8. Having regard for the fact that there are or may be certain manufacturers of plaster or gypsum products, or jobbers of such products, who do not or may not manufacture gypsum wallboard or plasterboard but who desire or may desire to have gypsum wallboard or plasterboard manufactured for them, it is understood and agreed that Licensee may with the written consent of Licensor manufacture gypsum wallboard or plasterboard embodying the inventions and improvements set forth and claimed in said Letters Patent, for any such other manufacturer and/or jobber; provided, however, that the said license fee or royalty to be paid to Licensor as hereinbefore provided shall be based upon all gypsum wallboard or plasterboard manufactured for, and sold and invoiced to, such other manufacturer and/or jobber and upon the regular selling price of Licensee of such plasterboard or gypsum wallboard to its regular dealer trade at the time of such sale and invoice, and shall not be based upon the price at which plasterboard or gypsum wallboard is sold and invoiced by Licensee to such other manufacturer or jobber. The Licensee shall have no right to manufacture and sell any plasterboard or gypsum wallboard embodying the inventions and improvements set forth and claimed in any of said letters patent to other manufacturers or jobbers or other wholesale distributors of such products, without the written consent of Licensor.

It is understood that the selling price of the Licensee
wherever mentioned in this instrument means the
9248 selling price to its regular dealer trade, and in case
of the sale of any of said plasterboard or gypsum wallboard, whether patented or unpatented, for a price less than said price to Licensee's regular dealer trade, Licensee shall account to the Licensor in the payment of royalties hereunder at its regular dealer price; provided, however, that nothing herein continued shall give the Licensee the right to sell any of said patented products upon which the Licensor shall have fixed and determined the

price thereof in accordance with the terms hereof at less than such price.

9. The Licensee and the Licensor each expressly covenants and agrees that all of said patented products sold by it and commonly known in the trade as "seconds" shall be plainly invoiced as seconds and shall be plainly marked with a visible red stamp or label firmly fixed on each of said boards showing the word "seconds" in letters at least three inches in height.

10. It is expressly understood and agreed that the patented product manufactured and sold hereunder shall include all board having a protected edge, it being recognized by the parties hereto that any board manufactured by Licensee having a protected edge is within the scope of said Utzman Patents numbers 1,029,326 and 1,034,746.

After the expiration of said Letters Patent number 1,034,746 and until the expiration of Letters Patent number 1,330,413, it is expressly understood and agreed that the patented product manufactured and sold hereunder shall include all board having a protected edge, the parties hereto agreeing hereby that any and all board having a
9249 protected edge is within the claims or is manufactured according to the processes or by the use of machines embodying the claims either of said Letters Patent number 1,330,413, or of one or more of the other of said Letters Patent listed in Exhibit "A" hereto, under which the aforesaid indivisible and non-exclusive right, license and privilege is granted.

11. As one of the considerations for the indivisible and non-exclusive license herein and hereby granted, Licensee hereby acknowledges the validity of the Letters Patent, granted and to be granted, forming the subject-matter of this license, throughout the full term of this contract, unless the same shall be cancelled or terminated prior thereto by reason of the default of the Licensor hereunder, and agrees that it will not at any time before February 10th, 1937 or the earlier termination of the license by reason of the default of the Licensor hereunder, directly or indirectly, by itself, through or together with another or others, contest the validity of either or any of said Letters Patent or the title thereto of Licensor, or question in any way the prima facie scope of either or any of said Letters Patent, or the priority, novelty or patentability of the subject-matter of any of the said applications for letters patent.

12. In the event that either party shall at any time neglect, fail or refuse to keep or perform any of the conditions and agreements herein to be by it kept and performed, then the other party, at its election, may serve upon the party in default written notice of intention to terminate this Agreement, which notice shall specify the alleged neglect, failure or refusal, and if within thirty (30) days from the date of delivery of said notice, the party in default shall not cure the default specified in said notice, then the
9250 other party may cancel and terminate this Agreement, by notifying the party in default, in writing, of its election so to do, without the necessity of any court action; provided, however, that neither party shall be relieved thereby from any liability accrued at the time of such termination. In case at any time the Licensee shall be adjudged a bankrupt, then the license hereunder shall immediately be and become cancelled and terminated, but the Licensor shall not thereby be prevented from collecting all license fees or royalties accrued hereunder at the time of such termination. The waiver of any breach by either party shall not be interpreted as constituting a waiver of any further breach or breaches. Either party may specifically enforce this contract or any of the terms, conditions and covenants hereof by injunction or in such other manner as may be provided by law.

13. Any notice to be given under the terms hereof may be served upon the Licensor or the Licensee by mailing the same to the Licensor or Licensee, postage prepaid, addressed to it as its last known principal office, and the deposit of any such notice in the United States mails, postage prepaid and so addressed, shall constitute service of notice hereunder.

14. It is understood and agreed that if at any time during the term hereof the Licensee shall, in the judgment of the Licensor, suffer substantial detriment by reason of any infringement upon the part of any person or persons of the said patents, whether now or hereafter issued, under which this license is granted, the Licensor will afford the Licensee such responsible protection as in the judgment of the Licensor shall be necessary or proper; and in case the Licensor shall grant to any such infringer, or to any other person, any license under said patents upon terms more favorable than those granted hereunder to this
9251 Licensee, then it will grant to this Licensee a license on the same terms.

15. The terms "plasterboard" and "gypsum wallboard" shall be understood to mean all board by whatever name

called having the structural characteristics of plasterboard or gypsum wallboard, irrespective of the purpose for which the same may be sold or used.

16. The term "sum of approximately One Hundred Eighty Thousand Dollars ($180,000)" whenever used herein shall mean an amount of money to be determined as follows:

Within thirty days, an Accountant, satisfactory to both parties, shall make an audit of licensee's books as to quantities and prices of plasterboard and gypsum wallboard of all kinds sold by the licensee prior to the date hereof and shall make a certified report thereon. A sum equivalent to 5% of the licensee's selling price of all plasterboard and gypsum wallboard of all kinds sold by the licensee between the 29th of July, 1926, and the date hereof, as shown by said report of audit, shall be the principal sum; to this sum shall be added another sum as compensation for infringement of patents prior to 29th of July 1926, which shall be determined by the licensor on substantially the same basis as the settlements made by licensor with other infringers of the aforesaid patents, for infringements prior to said date. The two sums thus added together shall be the amount which the term "sum of approximately One Hundred Eighty Thousand Dollars ($180,000)" shall represent and mean.

17. This license and all of the covenants and agreements hereof shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto, but nothing in this paragraph shall be construed to permit an assignment hereof by the Licensee except as hereinabove specifically provided.

9252 In witness whereof the parties hereto have caused these presents to be signed by their respective Presidents, attested by their respective Secretaries, and their corporate seals to be hereunto affixed, in duplicate, the day and year first above written.

UNITED STATES GYPSUM COMPANY,
By S. L. AVERY, *Its President.*

Attest:
P. G. BEAR, *Secretary.*

NATIONAL GYPSUM COMPANY,
By M. H. BAKER, *Its President.*

Attest:
T. E. DAVIS, *Secretary.*

9253 EXHIBIT "A"

Utzman patent No. 1,330,413. Application filed September 3, 1918, granted February 10, 1920, expires February 10, 1937.

Birdsey patent No. 1,358,508. Application filed January 2, 1920, granted November 9, 1920, expires November 9, 1937.

Utzman patent No. 1,383,249. Application filed August 13, 1918, granted June 28, 1921, expires June 28, 1938.

Birdsey patent No. 1,383,254. Application filed July 29, 1918, granted June 28, 1921, expires June 28, 1938.

Birdsey patent No. 1,383,255. Application filed January 2, 1920, granted June 28, 1921, expires June 28, 1938.

Birdsey patent No. 1,384,298. Application filed August 19, 1920, granted July 12, 1921, expires July 12, 1938.

Birdsey patent No. 1,395,031. Application filed January 2, 1920, granted October 25, 1921, expires October 25, 1938.

Birdsey patent No. 1,395,032. Application filed January 2, 1920, granted October 25, 1921, expires October 25, 1938.

Birdsey patent No. 1,406,967. Application filed January 3, 1921, granted February 21, 1922, expires February 21, 1939.

Birdsey patent No. 1,427,939. Application filed January 3, 1921, granted September 5, 1922, expires September 5, 1939.

Birdsey patent No. 1,428,624. Application filed January 2, 1920, granted September 12, 1922, expires September 12, 1939.

Brookby patent No. 1,489,693. Application filed September 25, 1922, granted April 8, 1924, expires April 8, 1941.

Birdsey patent No. 1,514,827. Application filed October 6, 1921, granted November 11, 1924, expires November 11, 1941.

Birdsey patent No. 1,515,380. Original application filed January 2, 1920, granted November 11, 1924, expires November 11, 1941.

Birdsey patent No. 1,518,243. Application filed September 22, 1922, granted December 9, 1924, expires December 9, 1941.

9254 Birdsey patent No. 1,525,715. Application filed January 2, 1920, granted February 10, 1925; expires February 10, 1942.

Birdsey patent No. 1,526,307. Application filed October 10, 1921, granted February 10, 1925, expires February 10, 1942.

Utzman patent No. 1,540,045. Application filed March 14, 1923, granted June 2, 1925, expires June 2, 1942.

Birdsey patent No. 1,558,459. Application filed October 4, 1922, granted October 27, 1925, expires October 27, 1942.

Birdsey patent No. 1,561,635. Application filed January 3, 1921, granted November 17, 1925, expires November 17, 1942.

Armstrong patent No. 1,278,821. Application filed January 4, 1918, granted September 17, 1918, expires September 17, 1935.

Armstrong patent No. 1,348,387. Application filed March 15, 1919, granted August 3, 1920, expires August 3, 1937; application for reissue filed June 3, 1922, Serial No. 565,737, reissued January 24, 1928, as Reissue patent No. 16,860.

Armstrong patent No. 1,367,292. Application filed July 12, 1919, granted February 1, 1921, expires February 1, 1938; application for reissue filed June 9, 1922, Serial No. 567,205, reissued May 22, 1928 as Reissue Patent No. 16,969.

Utzman patent No. 1,455,127. Application filed June 14, 1922, granted May 15, 1923, expires May 15, 1940.

Utzman patent No. 1,492,588. Application filed June 14, 1922, granted May 6, 1924, expires May 6, 1941.

Williams patent No. 1,519,180. Application filed August 18, 1922, granted December 16, 1924, expires December 16, 1941.

Armstrong patent No. 1,556,575. Application filed October 1, 1921, granted October 13, 1925, expires October 13, 1942.

Armstrong patent No. 1,399,455. Application filed February 24, 1920, granted December 6, 1921, expires December 6, 1938.

Tyler patent No. 1,417,117. Application filed November 15, 1919, granted May 23, 1922, expires May 23, 1939.

9255 Birdsey patent No. 1,643,801. Application Serial No. 437,062, filed January 13, 1921, granted September 27, 1927, expires September 27, 1944.

Birdsey patent No. 1,650,930. Application Serial No. 506,676, filed October 10, 1921, granted November 29, 1927, expires November 29, 1944.

Birdsey patent No. 1,676,318. Application Serial No. 545,231, filed March 20, 1922, granted July 10, 1928, expires July 10, 1945.

Birdsey patent No. 1,710,915. Application Serial No. 555,627, filed April 19, 1922, granted April 30, 1929, expires April 30, 1946.

Smith patent No. 1,603,158. Application Serial No. 662,359, filed September 12, 1923, granted October 12, 1926, expires October 12, 1943.

Birdsey patent No. 1,666,161. Application Serial No. 737,237, filed September 12, 1924, granted April 17, 1928, expires April 17, 1945.

Utzman patent No. 1,631,108. Application Serial No. 750,224, filed November 17, 1924, granted May 31, 1927, expires May 31, 1944.

Brookby & Absmeier patent No. 1,689,322. Application Serial No. 91,297, filed March 1, 1926, granted October 30, 1928, expires April 30, 1945.

Armstrong patent No. 1,701,291. Application Serial No. 310,470, filed July 12, 1919, granted February 5, 1929, expires February 5, 1946.

Utzman patent No. 1,638,280. Application Serial No. 374,833, filed April 19, 1920, granted August 9, 1927, expires August 9, 1944.

Armstrong patent No. 1,641,611. Application Serial No. 377,421, filed April 29, 1920, granted September 6, 1927, expires September 6, 1944.

Speer patent No. 1,686,671. Application Serial No. 427,044, filed November 29, 1920, granted October 9, 1928, expires October 9, 1945.

Speer patent No. 1,641,648. Application Serial No. 427,045, filed November 29, 1920, granted September 6, 1944.

Mehlhope patent No. 1,604,707. Application Serial No. 473,288, filed May 28, 1921, granted October 26, 1926, expires October 26, 1943.

9256 Gustafson patent No. 1,665,168. Application Serial No. 509,366, filed December 2, 1919; renewed October 21, 1921, granted April 3, 1928, expires April 3, 1945.

Kohler, et al. patent No. 1,673,944. Application Serial No. 540,412, filed March 2, 1922, granted June 19, 1928, expires June 19, 1945.

Utzman patent No. 1,703,183. Application Serial No. 581,362, filed August 12, 1922, granted February 26, 1929, expires February 26, 1946.

Birdsey application Serial No. 583,795, filed August 23, 1922. Finally allowed January 18, 1929. Patent No. 1,717,890 will issue June 25, 1929.

Utzman application Serial No. 477,371, filed June 14, 1921. Finally allowed April 26, 1929.

Knode application Serial No. 590,358, filed September 25, 1922.

Utzman application Serial No. 581,361, filed August 12, 1922.

Williams application Serial No. 582,606, filed August 18, 1922.

9257 *Government's Exhibit No. 4*

LICENSE AGREEMENT

This agreement executed in duplicate this 22 day of May, 1929, by and between the United States Gypsum Company, an Illinois corporation of Chicago, Illinois, hereinafter referred to as "Licensor" and Certain-teed Products Corporation, a Maryland corporation having its principal office at Baltimore, Maryland, hereinafter referred to as "Licensee", witnesseth:

Whereas, Licensor is the owner of the entire right, title and interest in, to and under Letters Patent of the United States, No. 1,029,328, dated June 11th, 1912, and No. 1,034,746, dated August 6th, 1912 (hereinafter called the "Utzman Patents"), and Letters Patent of the United States, No. 1,358,508, dated November 9, 1920 (hereinafter called the "Birdsey Patent"), and is also the owner of the entire right, title and interest in, to and under the Letters Patent and applications for Letters Patent of the United States set forth in Exhibit "A" attached hereto and made a part hereof, and any and all Letters Patent which may be granted therefor or thereupon; and

Whereas, heretofore said Utzman Patents have been adjudicated by the United States District Court for the Northern District of Illinois, Eastern Division, and by the United States Circuit Court of Appeals for the Seventh Circuit (258 Fed. 647; 270 Fed. 542; 290 Fed. 798; 290 Fed. 800; 15 Fed. (2d) 704; see also 263 U. S. 713), and said courts have decreed that said Utzman Patents are valid and were infringed by the defendants named in said suits, by reason of their making, using and selling plasterboard or gypsum wallboard having protected
9258 edges and said District Court ordered perpetual injunctions and accountings against said defendants; and

Whereas, Licensee recognizes and admits the validity and scope of said Utzman patents; and

Whereas, said Birdsey Patent number 1,358,508 has been adjudicated by the United States District Court for the Northern District of Ohio (in Equity Number 1621), and said Court has decreed that said Birdsey Patent is valid and was infringed by defendant in said cause by reason of its making, using and selling plasterboard and/or gypsum wallboard having edges of the character disclosed in said patent, and said District Court ordered a perpetual injunction and accounting against defendant, which cause is now pending on appeal before the United States Circuit Court of Appeals for the Sixth Circuit (Appeal number 5392); and

Whereas, on or about April 1, 1928, Licensee acquired substantially all the plants, properties and assets of The Beaver Products Company, Inc., and the Licensor now asserts a claim against the Licensee for a sum equivalent to five per cent (5%) of the Licensee's selling price of

all plasterboard and gypsum wallboard of every kind manufactured at plants formerly owned by The Beaver Products Company, Inc., and sold by the Licensee between April 1, 1928, and the date hereof, and the Licensee recognizes such claim and has agreed to pay the same in the manner hereinafter provided; and

Whereas, Licensor, at the request of Licensee, has agreed to grant a license to Licensee under the aforesaid patents, and to settle the said claim, in consideration of the payment by the Licensee to Licensor of five per cent (5%) of Licensee's selling price of all plasterboard or gypsum wallboard manufactured and sold by it until August 6th, 1929, and one and one-half per cent (1½%) of such selling price from August 6th, 1929, to February 10th, 1937, plus three and one-half per cent (3½%) of such selling price from August 6th, 1929, until said three and one-half per cent (3½%) of such selling price shall aggregate
9259 the fixed sum mentioned in paragraph 16 hereof.

Now, therefore, in consideration of the sum of one dollar and other good and valuable considerations, receipt whereof is hereby acknowledged, the parties hereto do hereby agree as follows, to-wit.

1. Licensor has agreed to and does hereby give and grant unto Licensee, an indivisible and non-exclusive right, license and privilege of using the processes, and making and using the machines and/or inventions set forth and claimed in said Utzman Patents, and in any and all of said patents or applications for letters patent described in said Exhibit A, at the plant or factory now owned and/or operated by Licensee at Fort Dodge, Iowa; Grand Rapids, Michigan; Acme, Texas; Akron, New York, or at any other plant or factory hereafter owned or operated by it, and of manufacturing at said plant or factory and selling and/or using plasterboard or gypsum wallboard manufactured at said plant or factory and embodying the inventions and improvements set forth and claimed in said Utzman Patents and said patents and applications for letters patent described in Exhibit A, until the 10th day of February, 1937, the date of expiration of patent number 1,330,413 mentioned in said Exhibit A, all subject to the terms and conditions hereinafter stated.

It is expressly understood and agreed that the indivisible and non-exclusive right, license and privilege aforesaid is granted upon condition that the Licensor shall have, and

it hereby reserves the right to determine and fix at any time and to change from time to time during the term of said Utzman Patent number 1,034,746 the minimum price or prices at which the Licensee shall sell any plasterboard or gypsum wallboard manufactured by Licensee embodying the improvements set forth and claimed in the said Utzman Patent 1,034,746, and in case it shall exercise the
9260 right so reserved it shall first serve written notice of its intention so to do upon Licensee accompanied with a statement of the price or prices at which the Licensee shall sell said patented product, and thereafter shall give to the Licensee written or telegraphic notice of any change in such price or prices, and the Licensee expressly covenants and agrees that it will not at any time during the term of said Utzman Patent number 1,034,746, after the receipt of such notice, directly or indirectly sell or offer for sale any plasterboard or gypsum or wallboard embodying the improvements set forth and claimed in said Utzman Patent number 1,034,746 prior to the expiration thereof at a price or prices less than that stated by the Licensor in said notice or in any such written or telegraphic notice of a change in such price or prices.

2. The Licensee further agrees to pay to the Licensor in settlement and discharge of said claim and for the right, license and privilege of manufacturing, using and/or selling plasterboard or gypsum wallboard, and for the privilege of using the processes and making and using the machines and/or inventions embodying the inventions set forth and claimed in said Utzman Patents and in any and all of said patents and applications for letters patent described in Exhibit A, an amount (hereafter for convenience referred to as a license fee or royalty) equivalent to five per cent (5%) of the selling price of the Licensee of all plasterboard or gypsum wallboard of every kind, whether patented or unpatented, manufactured and sold by Licensee between the date hereof and August 6, 1929, the date of the expiration of said Utzman Patent number 1,034,746 and thereafter an amount equivalent to one and one-half per cent (1½%) of the selling price of the Licensee of all such plasterboard or gypsum wallboard from August 6, 1929, until February 10, 1937, the date
9261 of the expiration of said patent number 1,330,413, and in addition thereto an amount equivalent to three and one-half per cent (3½%) of the selling price of the Licensee of such plasterboard or gypsum wallboard

from August 6, 1929, until said three and one-half per cent (3½%) of said selling price shall have aggregated the fixed sum mentioned in Paragraph 16 hereof.

It is understood and agreed that if prior to the expiration of said license the Licensee shall not have paid to the Licensor said additional fixed sum mentioned in Paragraph 16 hereof, over and above the said five per cent (5%) royalties between the date hereof and August 6, 1929, and the said one and one-half per cent (1½%) royalties from August 6, 1929, until February 10, 1937, the Licensee shall from the date of the expiration of said license pay to the Licensor five per cent (5%) of the selling price of the Licensee of all plasterboard or gypsum wallboard manufactured and sold by it until said fixed sum mentioned in Paragraph 16 hereof shall have been fully paid and satisfied.

It is expressly understood and agreed that this contract is executed without prejudice to Licensor to assert its said claim against Licensee in case for any reason this contract shall not remain in force throughout the full term thereof and the Licensee shall not pay to the Licensor all of the sums of money herein agreed to be paid to it in accordance with the terms hereof, and it is further agreed that the said claim of the Licensor against Licensee is not settled or discharged by the execution of this instrument, but shall only be settled and discharged by the full performance of this contract and the payment to Licensor of said sums of money. In case of the termination of this contract at any time prior to the expiration thereof or in the event of the failure of Licensee to make full payment to Licensor of all of said royalties or License fees, including said additional fixed sum mentioned in
9262 Paragraph 16 hereof, in the manner herein specified, Licensor shall have, in addition to all its other rights under this agreement, the right to recover of and from Licensee the full amount of its said claim, and nothing herein contained shall prevent the recovery by Licensor of the full amount of its said claim from Licensee, less only such sums as shall have been paid by Licensee to Licensor since August 6, 1929, on account of said additional fixed sum mentioned in Paragraph 16 hereof. Upon the payment to Licensor of all of said royalties or license fees throughout the full term of said license, plus said additional fixed sum mentioned in Paragraph 16 hereof, at the time and in the manner herein specified, then the said claim

of Licensor against Licensee shall thereupon be and become fully settled, discharged and satisfied.

3. It is expressly understood and agreed that the license herein granted shall be personal to the Licensee and that the same or any right therein or thereunder shall not be sold, assigned or transferred without written consent of the Licensor or transferred by operation of law.

4. It is expressly understood that the Licensee shall not discontinue its business of manufacturing and selling plasterboard and/or gypsum wallboard until the Licensor shall have received the full payment of all of the amounts agreed to be paid to it hereunder by the Licensee, nor shall this license be assigned to any company or companies acquiring the capital stock or assets of Licensee, or to any company resulting from any merger or consolidation between Licensee and any other company, nor shall any such merger, consolidation or acquisition affect any claims which Licensor has against Licensee or against any such other company for infringement of its said patents or
9263 otherwise; Provided, However, that this license may, with the written consent of the Licensor, be assigned to any company holding a similar license from Licensor upon the express assumption by such company of all claims of Licensor against Licensee and of the agreements and obligations of the Licensee herein contained.

5. Licensee agrees to keep separate full and accurate books of account and records showing the exact quantity of all plasterboard and gypsum wallboard manufactured and sold by it, and agrees that on or before the 20th day of each and every calendar month it will render unto Licensor true written returns, verified under oath by an officer or other agent of Licensee, setting forth the quantity of all plasterboard and gypsum wallboard manufactured and sold by it during the preceding calendar month, together with the price or prices at which the same was sold, such written returns to be delivered to Licensor at its offices in Chicago, Illinois, and Licensee agrees to pay to Licensor, on or before the 20th day of each calendar month, at the office of Licensor at Chicago, Illinois, the hereinbefore stipulated royalties or license fees which may then be due under this agreement on account of all of said plasterboard and gypsum wallboard manufactured and sold by it during the next preceding calendar month.

6. Licensor, or its duly authorized representative, shall have the right at all reasonable times during business hours to inspect the books of account and records of Licensee referred to in the next preceding paragraph hereof, including all records of every kind showing the
9264 quantity of said plasterboard and gypsum wallboard manufactured and sold by it, the price or prices at which the same was sold, and to make copies thereof and memoranda therefrom.

7. Licensee agrees that all plasterboard or gypsum wallboard manufactured and sold by it embodying the claims of any of said patents shall be distinctly marked with the word "Patented," together with the dates of the Utzman Patents, and the dates of any other patents which Licensor may properly specify, and in connection with the said markings it will further mark said patented product with the words, "Licensed under the above Letters Patent," which markings shall be plainly visible.

8. Having regard for the fact that there are or may be certain manufacturers of plaster or gypsum products, or jobbers of such products, who do not or may not manufacture gypsum wallboard or plasterboard but who desire or may desire to have gypsum wallboard or plasterboard manufactured for them, it is understood and agreed that Licensee may with the written consent of Licensor manufacture gypsum wallboard or plasterboard embodying the inventions and improvements set forth and claimed in said Letters Patent, for any such other manufacturer and/or jobber; provided, however, that the said license fee or royalty to be paid to Licensor as hereinbefore provided, shall be based upon all gypsum wallboard or plasterboard manufactured for, and sold and invoiced to, such other manufacturer and/or jobber and upon the regular selling price of Licensee of such plasterboard or gypsum wallboard to its regular dealer trade at the time of such sale and invoice, and shall not be based upon the price at which plasterboard or gypsum wallboard is sold and invoiced by Licensee to such other manufacturer or
9265 jobber. The Licensee shall have no right to manufacture and sell any plasterboard or gypsum wallboard embodying the inventions and improvements set forth and claimed in any of said letters patent to other manufacturers or jobbers or other wholesale distributors of such products, without the written consent of Licensor.

It is understood that the selling price of the Licensee wherever mentioned in this instrument means the selling price to its regular dealer trade, and in case of the sale of any of said plasterboard or gypsum wallboard, whether patented or unpatented, for a price less than said price to Licensee's regular dealer trade, Licensee shall account to the Licensor in the payment of royalties hereunder at its regular dealer price; provided, however, that nothing herein contained shall give the Licensee the right to sell any of said patented products upon which the Licensor shall have fixed and determined the price thereof in accordance with the terms hereof at less than such price.

9. The Licensee and the Licensor each expressly covenants and agrees that all of said patented product sold by it and commonly known in the trade as "seconds" shall be plainly invoiced as seconds and shall be plainly marked with a visible red stamp or label firmly fixed on each of said boards showing the word "seconds" in letters at least three inches in height.

10. It is expressly understood and agreed that the patented product manufactured and sold hereunder shall include all board having a protected edge, it being recognized by the parties hereto that any board manufactured by Licensee having a protected edge is within the scope of said Utzman Patents numbers 1,029,326 and 1,034,746.

9266 After the expiration of said letters patent number 1,034,746 and until the expiration of Letters Patent number 1,330,413, it is expressly understood and agreed that the patented product manufactured and sold hereunder shall include all board having a protected edge, the parties hereto agreeing hereby that any and all board having a protected edge is within the claims or is manufactured according to the processes or by the use of machines embodying the claims either of said Letters Patent Number 1,330,413, or of one or more of the other of said Letters Patent listed in Exhibit A hereto, under which the aforesaid indivisible and non-exclusive right, license and privilege is granted.

11. As one of the considerations for the indivisible and non-exclusive license herein and hereby granted, Licensee hereby acknowledges the validity of the Letters Patent, granted and to be granted, forming the subject-matter of this license, throughout the full term of this contract,

unless the same shall be cancelled or terminated prior thereto by reason of the default of the Licensor hereunder, and agrees that it will not at any time before February 10th, 1937, or the earlier termination of the license by reason of the default of the Licensor hereunder, directly or indirectly, by itself, through or together with another or others, contest the validity of either or any of said Letters Patent or the title thereto of Licensor, or question in any way the prima facie scope of either or any of said Letters Patent, or the priority, novelty or patentability of the subject-matter of any of the said applications for letters patent.

12. In the event that either party shall at any time neglect, fail or refuse to keep or perform any of the conditions and agreements herein to be by it kept and
9267 performed, then the other party, at its election, may serve upon the party in default written notice of intention to terminate this Agreement, which notice shall specify the alleged neglect, failure or refusal, and if within thirty (30) days from the date of delivery of said notice, the party in default shall not cure the default specified in said notice, then the other party may cancel and terminate this Agreement, by notifying the party in default, in writing, of its election so to do, without the necessity of any court action; provided, however, that neither party shall be relieved thereby from any liability accrued at the time of such termination. In case at any time the Licensee shall be adjudged a bankrupt, then the license hereunder shall immediately be and become cancelled and terminated, but the Licensor shall not thereby be prevented from collecting all license fees or royalties accrued hereunder at the time of such termination. The waiver of any breach by either party shall not be interpreted as constituting a waiver of any further breach or breaches. Either party may specifically enforce this contract or any of its terms, conditions and covenants hereof by injunction or in such other manner as may be provided by law.

13. Any notice to be given under the terms hereof may be served upon the Licensor or the Licensee by mailing the same to the Licensor or Licensee, postage prepaid, addressed to it at its last known principal office, and the deposit of any such notice in the United States mails, postage prepaid and so addressed, shall constitute service of notice hereunder.

14. It is understood and agreed that if at any time during the term hereof the Licensee shall, in the judgment of the Licensor, suffer substantial detriment by reason of any infringement upon the part of any person or persons of the said patents, whether now or hereafter issued,
9268 under which this license is granted, the Licensor will afford the Licensee such reasonable protection as in the judgment of the Licensor shall be necessary or proper; and in case the Licensor shall grant to any such infringer, or to any other person, any license under said patents upon terms more favorable than those granted hereunder to this Licensee, then it will grant to this Licensee a license on the same terms.

15. The terms "plasterboard" and "gypsum wallboard" shall be understood to mean all board by whatever name called having the structural characteristics of plasterboard or gypsum wallboard, irrespective of the purpose for which the same may be sold or used.

16. The term "fixed sum mentioned in Paragraph 16 hereof," whenever used herein, shall mean an amount of money to be determined as follows: Within thirty (30) days from the date hereof, an accountant satisfactory to both parties shall make an audit of Licensee's books as to quantity and prices of plasterboard and gypsum wallboard of all kinds manufactured at the plants and/or mills formerly owned or operated by The Beaver Products Company, Inc., and sold by the Licensee between April 1, 1928, and the date hereof, and shall make a certified report thereon. A sum equivalent to five per cent (5%) of the Licensee's selling price of all such plasterboard and gypsum wallboard of all kinds sold between the dates aforesaid by the Licensee, as shown by said report of audit, shall be the amount which the term "fixed sum mentioned in Paragraph 16 hereof" shall represent and mean.

17. This license and all of the covenants and agreements hereof shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto, but nothing in this paragraph shall be construed to permit an assignment hereof by the Licensee except as hereinabove specifically provided.

9269 In witness whereof, the parties hereto have caused these presents to be signed by their respective Presi-

dents, attested by their respective Secretaries, and their corporate seals to be hereunto affixed, in duplicate, the day and year first above written.

[SEAL] UNITED STATES GYPSUM COMPANY,

By S. L. AVERY, *Its President.*

JOHN E. MACLEISH,
Witness.

[SEAL] CERTAIN-TEED PRODUCTS CORPORATION,

By GEO. M. BROWN, *Its President.*

EDWARD WHITTEMORE,
Witness.

9270 EXHIBIT "A"

Utzman patent No. 1,330,413. Application filed September 3, 1918, granted February 10, 1920, expires February 10, 1937.

Birdsey patent No. 1,358,508. Application filed January 2, 1920, granted November 9, 1920, expires November 9, 1937.

Utzman patent No. 1,383,249. Application filed August 13, 1918, granted June 28, 1921, expires June 28, 1938.

Birdsey patent No. 1,383,254. Application filed July 29, 1918, granted June 28, 1921, expires June 28, 1938.

Birdsey patent No. 1,383,255. Application filed January 2, 1920, granted June 28, 1921, expires June 28, 1938.

Birdsey patent No. 1,388,298. Application filed August 19, 1920, granted July 12, 1921, expires July 12, 1938.

Birdsey patent No. 1,395,031. Application filed January 2, 1920, granted October 25, 1921, expires October 25, 1938.

Birdsey patent No. 1,395,032. Application filed January 2, 1920, granted October 25, 1921, expires October 25, 1938.

Birdsey patent No. 1,406,967. Application filed January 3, 1921, granted February 21, 1922, expires February 21, 1939.

Birdsey patent No. 1,427,939. Application filed January 3, 1921, granted September 5, 1922, expires September 5, 1939.

Birdsey patent No. 1,428,624. Application filed January 2, 1920, granted September 12, 1922, expires September 12, 1939.

Brookby patent No. 1,489,693. Application filed September 25, 1922, granted April 8, 1924, expires April 8, 1941.

Birdsey patent No. 1,514,827. Application filed October 6, 1921, granted November 11, 1924, expires November 11, 1941.

Birdsey patent No. 1,515,380. Original application filed January 2, 1920, granted November 11, 1924, expires November 11, 1941.

Birdsey patent No. 1,518,243. Application filed September 22, 1922, granted December 9, 1924, expires December 9, 1941.

9271 Birdsey patent No. 1,525,715. Application filed January 2, 1920, granted February 10, 1925, expires February 10, 1942.

Birdsey patent No. 1,526,307. Application filed October 10, 1921, granted February 10, 1925, expires February 10, 1942.

Utzman patent No. 1,540,045. Application filed March 14, 1923, granted June 2, 1925, expires June 2, 1942.

Birdsey patent No. 1,558,459. Application filed October 4, 1922, granted October 27, 1925, expires October 27, 1942.

Birdsey patent No. 1,561,635. Application filed January 3, 1921, granted November 17, 1925, expires November 17, 1942.

Birdsey application Serial No. 437,062, filed January 13, 1921.

Birdsey application Serial No. 506,676, filed October 10, 1921.

Birdsey application Serial No. 545,231, filed March 20, 1922.

Birdsey application Serial No. 555,627, filed April 19, 1922.

Birdsey application Serial No. 583,795, filed August 23, 1922.

Moore application Serial No. 590,356, filed September 25, 1922.

Knode application Serial No. 590,358, filed September 25, 1922.

Birdsey application Serial No. 605,896, filed December 9, 1922.

Smith application Serial No. 662,359, filed September 12, 1923.

Birdsey application Serial No. 737,237, filed September 12, 1924.

Utzman application Serial No. 750,224, filed November 17, 1924.

Birdsey application Serial No. 754,927, filed December 10, 1924.

Brookby application Serial No. 50,538, filed August 17, 1925.

9272 Birdsey application Serial No. 57,507, filed September 21, 1925.

Brookby & Absmeier application Serial No. 91,297, filed March 1, 1926.

Armstrong patent No. 1,278,821. Application filed January 4, 1918, granted September 17, 1918, expires September 17, 1935.

Armstrong patent No. 1,348,387. Application filed March 15, 1919, granted August 3, 1920, expires August 3, 1937; application for reissue filed June 3, 1922, Serial 565,737.

Armstrong patent No. 1,367,292. Application filed July 12, 1919, granted February 1, 1921, expires February 1, 1938; application for reissue filed June 9, 1922, Serial 567,205.

Utzman patent No. 1,455,127. Application filed June 14, 1922, granted May 15, 1923, expires May 15, 1940.

Utzman patent No. 1,492,588. Application filed June 14, 1922, granted May 6, 1924, expires May 6, 1941.

Williams patent No. 1,519,180. Application filed August 18, 1922, granted December 16, 1924, expires December 16, 1941.

Armstrong patent No. 1,556,575. Application filed October 1, 1921, granted October 13, 1925, expires October 13, 1942.

Armstrong patent No. 1,399,455. Application filed February 24, 1920, granted Decembe. 6, 1921, expires December 6, 1938.

Tyler patent No. 1,417,117. Application filed November 15, 1919, granted May 23, 1922, expires May 23, 1939.

Armstrong application Serial No. 310,470, filed July 12, 1919.

Utzman application Serial No. 374,833, filed April 19, 1920.

Armstrong application Serial No. 377,421, filed April 29, 1920.

Speer application Serial No. 427,044, filed November 29, 1920.

Speer application Serial No. 427,045, filed November 29, 1920.

Mehlhope application Serial No. 473,288, filed May 28, 1921.

9273 Utzman application Serial No. 477,371, filed June 14, 1921.

Kohler application Serial No. 482,073, filed July 2, 1921.

Gustafson application Serial No. 509,366, filed December 2, 1919; renewed October 21, 1921.

Kohler, et al., application Serial No. 540,412, filed March 2, 1922.

Armstrong application Serial No. 565,737, filed June 3, 1922.

Armstrong application Serial No. 567,205, filed June 9, 1922.

Utzman application Serial No. 581,361, filed August 12, 1922.

Utzman application Serial No. 581,362, filed August 12, 1922.

Williams application Serial No. 582,606, filed August 18, 1922.

Tonning application Serial No. 590,221, filed September 25, 1922.

Armstrong application Serial No. 596,983 filed October 26, 1922.

Speer application Serial No. 610,739, filed January 5, 1923.

Rehm application Serial No. 8,654, filed February 12, 1925.

Rehm application Serial No. 8,655, filed February 12, 1925.

Rehm application Serial No. 8,656, filed February 12, 1925.

Rehm application Serial No. 8,657, filed February 12, 1925.

Rehm application Serial No. 23,775, filed April 17, 1925.

9274 *Government's Exhibit No. 5*

LICENSE AGREEMENT

This agreement, executed in duplicate this 22nd day of May, 1929, by and between the United States Gypsum Company, an Illinois corporation, of Chicago, Illinois, hereinafter referred to as "Licensor," and Ebsary Gypsum Co. Inc., a New York corporation, of Newark, N. J., hereinafter referred to as "Licensee," witnesseth:

Whereas, Licensor is the owner of the entire right, title and interest in, to and under Letters Patent of the United States, No. 1,029,328, dated June 11th, 1912, and No. 1,034,746, dated August 6th, 1912 (hereinafter called the "Utzman Patents"), and Letters Patent of the United States, No. 1,358,508, dated November 9, 1920 (hereinafter called the "Birdsey Patent"), and is also the owner of the entire right, title and interest in, to and under the Letters Patent and applications for Letters Patent of the United States set forth in Exhibit "A" attached hereto and made a part hereof, and any and all Letters Patent which may be granted therefor or thereupon; and

Whereas, heretofore said Utzman Patents have been adjudicated by the United States District Court for the Northern District of Illinois, Eastern Division, and by the United States Circuit Court of Appeals for the Seventh

Circuit (258 Fed. 647; 270 Fed. 542; 290 Fed. 798; 290 Fed. 800; 15 Fed. (2d) 704; see also 263 U. S. 713), and said Courts have decreed that said Utzman Patents are valid and were infringed by the defendants named in said suits, by reason of their making, using and selling plasterboard or gypsum wallboard having protected edges, and said District Court ordered perpetual injunctions and accountings against said defendants; and

Whereas, said Birdsey Patent Number 1,358,508 has been adjudicated by the United States District Court
9275 for the Northern District of Ohio (In Equity Number 1621), and said Court has decreed that said Birdsey Patent is valid and was infringed by defendant in said cause by reason of its making, using and selling plasterboard and/or gypsum wallboard having edges of the character disclosed in said patent, and said District Court ordered a perpetual injunction and accounting against defendant, which cause is now pending on appeal before the United States Circuit Court of Appeals for the Sixth Circuit (Appeal Number 5392); and

Whereas, Licensee recognizes and admits the validity and scope of said patents and is desirous of obtaining a license to use the processes and make and use the machines and/or inventions set forth and claimed in said patents and in said patents or applications for letters patent described in Exhibit "A"; and

Whereas, Licensor has been unwilling to grant a license except upon the express condition that Licensee will manufacture plasterboard or gypsum wallboard only with a folded or protected edge similar to that manufactured by Licensor, so that Licensor may be protected in its own business of manufacturing and selling said patented products and realize to the fullest extent the benefits under said patents from the manufacture by said Licensee; and

Whereas, Licensor has agreed to waive the express condition aforesaid and grant the said License in consideration of the agreement of Licensee to pay to it for the license to use the processes and make and use the machines and/or inventions set forth and claimed in all of said patents and applications for letters patent the amounts hereinafter stated and upon the terms and conditions hereinafter set forth,

Now, therefore, in consideration of the sum of One Dollar ($1.00), and other good and valuable consideration, the

receipt whereof is hereby acknowledged, the parties hereto do hereby agree as follows, to-wit:

9276 1. Licensor has agreed to and does hereby give and grant unto Licensee, an indivisible and non-exclusive right, license and privilege of using the processes, and making and using the machines and/or inventions set forth and claimed in said Utzman Patents, and in any and all of said patents or applications for letters patent described in said Exhibit A, at the plant or factory now owned and/or operated by Licensee at Wheatland, New York, or at any other plant or factory hereafter owned or operated by it, and of manufacturing at said plant or factory and selling and/or using plasterboard or gypsum wallboard manufactured at said plant or factory and embodying the inventions and improvements set forth and claimed in said Utzman Patents and said patents and applications for letters patent described in Exhibit A, until the 10th day of February, 1937, the date of expiration of patent number 1,330,413 mentioned in said Exhibit A, all subject to the terms and conditions hereinafter stated.

It is expressly understood and agreed that the indivisible and non-exclusive right, license and privilege aforesaid is granted upon condition that the Licensor shall have, and it hereby reserves the right to determine and fix at any time and to change from time to time during the term of said Utzman Patent Number 1,034,746 the minimum price or prices at which the Licensee shall sell any plasterboard or gypsum wallboard manufactured by Licensee embodying the improvements set forth and claimed in the said Utzman Patent 1,034,746, and in case it shall exercise the right so reserved it shall first serve written notice of its intention so to do upon Licensee, accompanied with a statement of the price or prices at which the Licensee shall sell said patented product, and thereafter shall give to the Licensee written or telegraphic notice of any change in such price or prices, and the Licensee expressly

9277 covenants and agrees that it will not at any time during the term of said Utzman Patent Number 1,034,746, after the receipt of such notice, directly or indirectly sell or offer for sale any plasterboard or gypsum wallboard embodying the improvements set forth and claimed in said Utzman Patent Number 1,034,746 prior to the expiration thereof at a price or prices less than

that stated by the Licensor in said notice or in any such written or telegraphic notice of a change in such price or prices.

2. The Licensee further agrees to pay to the Licensor for the right, license and privilege of manufacturing, using and/or selling plasterboard or gypsum wallboard, and for the privilege of using the processes and making and using the machines and/or inventions embodying the inventions set forth and claimed in said Utzman Patents and in any and all of said patents and applications for letters patent described in Exhibit A, an amount (hereinafter for convenience referred to as a license fee or royalty) equivalent to five per cent (5%) of the selling price of the Licensee of all plasterboard or gypsum wallboard of every kind, whether patented or unpatented, manufactured and sold by Licensee between the date hereof and August 6, 1929, the date of the expiration of said Utzman Patent Number 1,034,746, and thereafter an amount equivalent to one and one half per cent (1½%) of the selling price of the Licensee of all such plasterboard or gypsum wallboard from August 6, 1929, until February 10, 1937, the date of expiration of said Patent Number 1,330,413.

3. It is further agreed that so long as this agreement shall remain in force between the parties hereto, or in case the License granted under Paragraph 1 hereof shall continue until February 10, 1937, then until the expiration of the patent specifically described in this para-
9278 graph, the Licensor does hereby give and grant unto Licensee an indivisible and non-exclusive right, license and privilege of making and using the inventions set forth and claimed in that certain patent known as the Birdsey Plasterboard Bundle Patent Number 1,696,877, dated December 25, 1928, at the plant or factory now owned and/or operated by Licensee at Wheatland, New York, or at any other plant or factory hereafter owned or operated by it, and of selling bundles of plasterboard and/or gypsum wallboard set forth and claimed in said patent number 1,696,877, upon the terms and conditions hereinafter stated.

The Licensee agrees to pay to the Licensor for the right, license and privilege of making, using or selling the inventions set forth and claimed in said Patent Number 1,696,877, in addition to the sums hereinabove set forth, a license fee or royalty of ten cents (10¢) per thousand square feet of plasterboard and/or gypsum wallboard which is sold by

it in bundles of any kind, payable at the times and in accordance with the terms of Paragraph 4 hereof. It is expressly understood that licensee in its business of manufacturing and selling plasterboard and/or gypsum wallboard will use only said bundle set forth and claimed in said Patent Number 1,696,877 and will not use any other bundle or method of bundling plasterboard during the term of said license.

4. It is expressly understood and agreed that the license herein granted shall be personal to the Licensee and that the same or any right therein or thereunder shall not be sold, assigned or transferred without the written consent of the Licensor or transferred by operation of law.

It is expressly understood that the Licensee shall not discontinue its business of manufacturing and selling plasterboard and/or gypsum wallboard until the Licensor shall have received the full payment of all of the amounts
9279 agreed to be paid to it hereunder by the Licensee, nor shall this license be assigned to any company or companies acquiring the capital stock or assets of Licensee, or to any company resulting from any merger or consolidation between Licensee and any other company, nor shall any such merger, consolidation or acquisition affect any claim which Licensor has against Licensee or against any such other company for infringement of its said patents; provided, however, that this license may, with the written consent of the Licensor, be assigned to any company holding a similar license from Licensor upon the express assumption by such company of all claims of Licensor against Licensee and of the agreements and obligations of the Licensee herein contained.

5. Licensee agrees to keep separate, full and accurate books of account and records showing the exact quantity of all plasterboard and gypsum wallboard manufactured and sold by it, as well as a separate record of all plasterboard and/or gypsum wallboard sold by it in bundles, and agrees that on or before the 20th day of each and every calendar month it will render unto Licensor true written returns, verified under oath by an officer or other agent of Licensee, setting forth the quantity of all plasterboard and gypsum wallboard manufactured and sold by it during the preceding calendar month, and the quantity thereof put up and sold by it in bundles, together with the price or prices at which

the same was sold, such written returns to be delivered to Licensor at its office in Chicago, Illinois, and Licensee agrees to pay to Licensor, on or before the 20th day of each calendar month, at the office of Licensor at Chicago, Illinois, the hereinbefore stipulated royalties or license fees which may then be due under this agreement on account of all of said plasterboard and gypsum wallboard manufactured and sold by it during the next preceding calendar month.

6. Licensor, or its duly authorized representative, 9280 shall have the right at all reasonable times during business hours to inspect the books of account and records of Licensee referred to in the next preceding paragraph hereof, including all records of every kind showing the quantity of said plasterboard and gypsum wallboard manufactured and sold by it, and the quantity thereof put up and sold by it in bundles, the price or prices at which the same was sold, and to make copies thereof and memoranda therefrom.

7. Licensee agrees that all plasterboard or gypsum wallboard manufactured and sold by it embodying the claims of any of said patents shall be distinctly marked with the word "Patented", together with the dates of the Utzman Patents, and the dates of any other patents which Licensor may properly specify, and in connection with the said markings it will further mark said patented product with the words, "Licensed under the above Letters Patent," which markings shall be plainly visible.

8. Having regard for the fact that there are or may be certain manufacturers of plaster or gypsum products, or jobbers of such products, who do not or may not manufacture gypsum wallboard or plasterboard but who desire or may desire to have gypsum wallboard or plasterboard manufactured for them, it is understood and agreed that Licensee may with the written consent of Licensor manufacture gypsum wallboard or plasterboard embodying the inventions and improvements set forth and claimed in said Letters Patent, for any such other manufacturer and/or jobber; provided, however, that the said license fee or royalty to be paid to Licensor as hereinbefore provided shall be based upon all gypsum wallboard or plasterboard manufactured for, and sold and invoiced to, such other manufacturer and/or jobber and upon the regular selling price of Licensee

of such plasterboard or gypsum wallboard to its regular dealer trade at the time of such sale and invoice, and
9281 shall not be based upon the price at which plasterboard or gypsum wallboard is sold and invoiced by Licensee to such other manufacturer or jobber. The Licensee shall have no right to manufacture and sell any plasterboard or gypsum wallboard embodying the inventions and improvements set forth and claimed in any of said letters patent to other manufacturers or jobbers or other wholesale distributors of such products, without the written consent of Licensor.

It is understood that the selling price of the Licensee wherever mentioned in this instrument means the selling price to its regular dealer trade, and in case of the sale of any of said plasterboard or gypsum wallboard, whether patented or unpatented, for a price less than said price to Licensee's regular dealer trade, Licensee shall account to the Licensor in the payment of royalties hereunder at its regular dealer price; provided, however, that nothing herein contained shall give the Licensee the right to sell any of said patented products upon which the Licensor shall have fixed and determined the price thereof in accordance with the terms hereof at less than such price.

9. The Licensee and the Licensor each expressly covenants and agrees that all of said patented product sold by it and commonly known in the trade as "seconds" shall be plainly invoiced as seconds and shall be plainly marked with a visible red stamp or label firmly fixed on each of said boards showing the word "seconds" in letters at least three inches in height.

10. It is expressly understood and agreed that the patented product manufactured and sold hereunder shall include all board having a protected edge, it being recognized by the parties hereto that any board manufactured by Licensee having a protected edge is within the scope of said Utzman Patents Numbers 1,029,326 and 1,034,746.

9282 After the expiration of said Letters Patent number 1,034,746 and until the expiration of Letters Patent Number 1,330,413, it is expressly understood and agreed that the patented product manufactured and sold hereunder shall include all board having a protected edge, the parties hereto agreeing hereby that any and all board having a protected edge is within the claim or is manu-

factured according to the processes or by the use of machines embodying the claims either of said Letters Patent Number 1,330,413, or of one or more of the other of said Letters Patent listed in Exhibit "A" hereto, under which the aforesaid indivisible and non-exclusive right, license and privilege is granted.

11. As one of the considerations for the indivisible and non-exclusive license herein and hereby granted, Licensee hereby acknowledges the validity of the Letters Patent, granted and to be granted, forming the subject-matter of this license, throughout the full term of this contract, unless the same shall be cancelled or terminated prior thereto by reason of the default of the Licensor hereunder, and agrees that it will not at any time before February 10th, 1937, or the earlier termination of the license by reason of the default of the Licensor hereunder, directly or indirectly, by itself, through or together with another or others, contest the validity of either or any of said Letters Patent or the title thereto of Licensor, or question in any way the prima facie scope of either or any of said Letters Patent, or the priority, novelty or patentability of the subject-matter of any of the said applications for letters patent.

12. In the event that either party shall at any time neglect, fail or refuse to keep or perform any of the conditions and agreements herein to be by it kept and performed, then the other party, at its election, may serve upon the
9283 party in default written notice of intention to terminate this Agreement, which notice shall specify the alleged neglect, failure or refusal, and if within thirty (30) days from the date of delivery of said notice, the party in default shall not cure the default specified in said notice, then the other party may cancel and terminate this Agreement, by notifying the party in default, in writing, of its election so to do, without the necessity of any court action; provided, however, that neither party shall be relieved thereby from any liability accrued at the time of such termination. In case at any time the Licensee shall be adjudged a bankrupt, then the license hereunder shall immediately be and become cancelled and terminated, but the Licensor shall not thereby be prevented from collecting all license fees or royalties accrued hereunder at the time of such termination. The waiver of any breach by either party shall not be interpreted as constituting a waiver of any further breach or breaches. Either party may specifically enforce

this contract or any of the terms, conditions and covenants hereof by injunction or in such other manner as may be provided by law.

13. Any notice to be given under the terms hereof may be served upon the Licensor or the Licensee by mailing the same to the Licensor or Licensee, postage prepaid, addressed to it at its last known principal office, and the deposit of any such notice in the United States mails, postage prepaid and so addressed, shall constitute service of notice hereunder.

14. It is understood and agreed that if at any time during the term hereof the Licensee shall, in the judgment of the Licensor, suffer substantial detriment by reason of any infringement upon the part of any person or persons of the said patents, whether now or hereafter issued, under
9284 which this license is granted, the Licensor will afford the Licensee such reasonable protection as in the judgment of the Licensor, shall be necessary or proper; and in case the Licensor shall grant to any such infringer, or to any other person, any license under said patents upon terms more favorable than those granted hereunder to this Licensee, then it will grant to this License a license of the same terms.

15. The terms "plasterboard" and "gypsum wallboard" shall be understood to mean all board by whatever name called having the structural characteristics of plasterboard or gypsum wallboard, irrespective of the purpose for which the same may be sold or used.

16. This license and all of the covenants and agreements hereof shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto, but nothing in this paragraph shall be construed to permit an assignment hereof by the Licensee except as hereinabove specifically provided.

In witness whereof, the parties hereto have caused these presents to be signed by their respective Presidents, attested by their respective Secretaries, and their corporate seals to be hereunto affixed, in duplicate, the day and year first above written.

[SEAL] UNITED STATES GYPSUM COMPANY,
By S. L. AVERY, *Its President.*

JOHN E. MACLEISH,
Witness.

[SEAL] EBSARY GYPSUM CO. INC.,
By F. G. EBSARY, *Its President.*

GEORGE N. LENCI, V. P.
Witness.

9285 EXHIBIT "A"

Utzman patent No. 1,330,413. Application filed September 3, 1918, granted February 10, 1920, expires February 10, 1937.

Birdsey patent No. 1,358,508. Application filed January 2, 1920, granted November 9, 1920, expires November 9, 1937.

Utzman patent No. 1,383,249. Application filed August 13, 1918, granted June 28, 1921; expires June 28, 1938.

Birdsey patent No. 1,383,254. Application filed July 29, 1918, granted June 28, 1921, expires June 28, 1938.

Birdsey patent No. 1,383,255. Application filed January 2, 1920, granted June 28, 1921, expires June 28, 1938.

Birdsey patent No. 1,384,298. Application filed August 19, 1920, granted July 12, 1921, expires July 12, 1938.

Birdsey patent No. 1,395,031. Application filed January 2, 1920, granted October 25, 1921, expires October 25, 1938.

Birdsey patent No. 1,395,032. Application filed January 2, 1920, granted October 25, 1921, expires October 25, 1938.

Birdsey patent No. 1,406,967. Application filed January 3, 1921, granted February 21, 1922, expires February 21, 1939.

Birdsey patent No. 1,427,939. Application filed January 3, 1921, granted September 5, 1922, expires September 5, 1939.

Birdsey patent No. 1,428,624. Application filed January 2, 1920, granted September 12, 1922, expires September 12, 1939.

Brookby patent No. 1,489,693. Application filed September 25, 1922, granted April 8, 1924, expires April 8, 1941.

Birdsey patent No. 1,514,827. Application filed October 6, 1921, granted November 11, 1924, expires November 11, 1941.

Birdsey patent No. 1,515,380. Original application filed January 2, 1920, granted November 11, 1924, expires November 11, 1941.

Birdsey patent No. 1,518,243. Application filed September 22, 1922, granted December 9, 1924, expires December 9, 1941.

9286 Birdsey patent No. 1,525,715. Application filed January 2, 1920, granted February 10, 1925, expires February 10, 1942.

Birdsey patent No. 1,526,307. Application filed October 10, 1921, granted February 10, 1925, expires February 10, 1942.

Utzman patent No. 1,540,045. Application filed March 14, 1923, granted June 2, 1925, expires June 2, 1942.

Birdsey patent No. 1,558,459. Application filed October 4, 1922, granted October 27, 1925, expires October 27, 1942.

Birdsey patent No. 1,561,635. Application filed January 3, 1921, granted November 17, 1925, expires November 17, 1942.

Birdsey application Serial No. 437,062, filed January 13, 1921.

Birdsey application Serial No. 506,676, filed October 10, 1921.

Birdsey application Serial No. 545,231, filed March 20, 1922.

Birdsey application Serial No. 555,627, filed April 19, 1922.

Birdsey application Serial No. 583,795, filed August 23, 1922.

Moore application Serial No. 590,356, filed September 25, 1922.

Knode application Serial No. 590,358, filed September 25, 1922.

Birdsey application Serial No. 605,896, filed December 9, 1922.

Smith application Serial No. 662,359, filed September 12, 1923.

Birdsey application Serial No. 737,237, filed September 12, 1924.

Utzman application Serial No. 750,224, filed November 17, 1924.

Birdsey application Serial No. 754,927, filed December 10, 1924.

Brookby application Serial No. 50,538, filed August 17, 1925.

9287 Birdsey application Serial No. 57,507, filed September 21, 1925.

Brookby & Absmeier application Serial No. 91,297, filed March 1, 1926.

Armstrong patent No. 1,278,821. Applications filed January 4, 1918, granted September 17, 1918, expires September 17, 1935.

Armstrong patent No. 1,348,387. Application filed March 15, 1919, granted August 3, 1920, expires August 3, 1937; application for reissue filed June 3, 1922, Serial 565,737.

Armstrong patent No. 1,367,292. Application filed July 12, 1919, granted February 1, 1921, expires February 1, 1938; application for reissue filed June 9, 1922, Serial 567,205.

Utzman patent No. 1,455,127. Application filed June 14, 1922, granted May 15, 1923, expires May 15, 1940.

Utzman patent No. 1,492,588. Application filed June 14, 1922, granted May 6, 1924, expires May 6, 1941.

Williams patent No. 1,519,180. Application filed August 18, 1922, granted December 16, 1924, expires December 16, 1941.

Armstrong patent No. 1,556,575. Application filed October 1, 1921, granted October 13, 1925, expires October 13, 1942.

Armstrong patent No. 1,399,455. Application filed February 24, 1920, granted December 6, 1921, expires December 6, 1938.

Tyler patent No. 1,417,117. Application filed November 15, 1919, granted May 23, 1922, expires May 23, 1939.

Armstrong application Serial No. 310,470, filed July 12, 1919.

Utzman application Serial No. 374,833, filed April 19, 1920.

Armstrong application Serial No. 377,421, filed April 29, 1920.

Speer application Serial No. 427,044, filed November 29, 1920.

Speer application Serial No. 427,045, filed November 29, 1920.

Mehlhope application Serial No. 473,288, filed May 28, 1921.

9288 Utzman application Serial No. 477,371, filed June 14, 1921.

Kohler application Serial No. 482,073, filed July 2, 1921.

Gustafson application Serial No. 509,366, filed December 2, 1919; renewed October 21, 1921.

Kohler, et al., application Serial No. 540,412, filed March 2, 1922.

Armstrong application Serial No. 565,737, filed June 3, 1922.

Armstrong application Serial No. 567,205, filed June 9, 1922.

Utzman application Serial No. 581,361, filed August 12, 1922.

Utzman application Serial No. 581,362, filed August 12, 1922.

Williams application Serial No. 582,606, filed August 18, 1922.

Tonning Application Serial No. 590,221, filed September 25, 1922.

Armstrong application Serial No. 596,983, filed October 26, 1922.

Speer Application Serial No. 610,739, filed January 5, 1923.

Rehm application Serial No. 8,654, filed February 12, 1925.

Rehm application Serial No. 8,655, filed February 12, 1925.

Rehm application Serial No. 8,656, filed February 12, 1925.

Rehm application Serial No. 8,657, filed February 12, 1925.

Rehm application Serial No. 23,775, filed April 17, 1925.

9289 *Government's Exhibit No. 6*

November 5th, 1929.

ABEL DAVIS AND EUGENE HOLLAND,
Receivers, and Universal Gypsum & Lime Co.,
Chicago, Illinois.

DEAR SIRS: Referring to contract with you of even date herewith, in order to clear up some questions of construction of the instrument as drawn, it is understood that:

The words "less five cents (5¢) per one thousand (1,000) square feet if in board form or the equivalent thereto in weight if in other form" appearing on page 6 of said contract shall be construed to mean 5¢ for each 1,000 square feet of plasterboard or gypsum wallboard and on all other gypsum products 5¢ for each such number of pounds as is the equivalent of the number of pounds in 1,000 square feet of plasterboard or gypsum wallboard of 3/8" thickness, and for this purpose the weight of 1,000 square feet of any such board is to be taken as 1850 pounds.

The paragraph commencing on page 6 of said contract with the words "First party does hereby agree also to pay to second and third parties" and ending on page 7 with the words "and such licensee shall have paid its license fees or royalties therefor to first party" means that first party

is to pay the said 1% less said 5¢ of the licensee's price upon the same number of feet of each kind of plasterboard or gypsum wallboard or the same quantity of other gypsum products, upon which the licensee is required to pay royalties or license fees to first party for the use of the Haggerty and/or Hite patents and only during the time the license with such licensee remains in force and such licensee pays its license fees or royalties to first party.

The provision commencing on page 8 with the words "If first party voluntarily cancels or changes any such license" and ending on page 9 with the words "first party may have under said license" is to be construed as follows:

(1) The words "If first party voluntarily cancels or changes any such license" appearing in said provision mean a cancellation or change voluntarily and deliberately made by agreement between first party and the licensee without the consent of second or third parties and do not include the cancellation, termination or change of the license agreement for any other reason whatsoever. Without intending to limit the phrase "for any other reason whatsoever" in the next preceding sentence, it is understood that the words "If first party voluntarily cancels or changes any such license" do not mean or include termination, cancellation or change made or done pursuant to the terms of the license agreement or in the exercise of any right or privilege thereunder; or due to any construction which may be put upon the license agreement by any court different from that claimed or understood by second or third parties or by first party or the licensee; or because of the holding of any court that the license agreement or any part thereof is invalid or unenforcible; or by the action, order or decree of any court for any reason whatsoever; or because of any default by the licensee thereunder; or because of any claim made by the licensee with respect to any inducement in the making of the license agreement or that first party has defaulted in any of the terms or conditions thereof; or resulting from an award or finding of arbiters ap-
9290 pointed under the terms of the license agreement; or arising on account of errors, mistakes or omissions made by the agents or employes of first party or the licensee in or about the performance of the license agreement.

(2) The words contained in said provision commencing with the words "then first party will make said payment" and ending with the words "until the expiration of

said Haggerty patent or such earlier date that first party would have been relieved from paying upon the licensee's production and sales if no such voluntary cancellation or change had occurred" are to be construed according to the following illustrations:

(a) Suppose a license agreement has been made with X which during the first 6 months thereof manufactured and sold 600,000 square feet of plasterboard and gypsum wallboard, consisting of 300,000 square feet of gypsum lath, 200,000 square feet of gypsum wallboard and 100,000 square feet of plasterboard, and upon which first party made monthly payments to second and third parties in accordance with the terms of said contract. Assume that a year after the license agreement is made with X first party, by voluntary agreement with X, changes the license agreement so that X is required to pay royalties or license fees to first party upon only half of its production and sales, thereby reducing the number of feet of such board upon which first party is required to pay second and third parties. If such change were then applied to the first six months of the license agreement with X it would appear that first party would have paid upon only 300,000 square feet, consisting of 150,000 square feet of lath, 100,000 square feet of wallboard and 50,000 square feet of plasterboard. The extent of the reduction during such six months' period would have been the difference between the original 600,000 square feet and the said 300,000 square feet, or 150,000 square feet of lath, 100,000 square feet of wallboard and 50,000 square feet of plasterboard, one-sixth of each of which, or 25,000 square feet of lath, 16,666 square feet of wallboard and 8,333 square feet of plasterboard, is the number of square feet making up such reduction and upon which first party would be required to pay second and third parties monthly until the expiration of the Haggerty patent or such earlier date that first party would have been relieved from paying upon X's production and sales if no such voluntary cancellation or change had occurred; and first party in such case would also continue to pay monthly on the 50,000 square feet upon which X continued to pay license fees or royalties to first party. Suppose during any month following the change X should increase its production and sales to 200,000 square feet, then during any such month first party would pay to second and third parties upon 100,000 square feet, being the number of feet upon which first party receives royalties or license fees

from X, plus 50,000 square feet, the amount of said reduction. If, on the other hand, during any month following such a change X's production and sales decreased to 50,000 square feet, then first party would pay upon 25,000 square feet, being the number of feet upon which first party receives royalties or license fees from X, plus the said reduction of 50,000 square feet;

(b) If in such case the license with X was voluntarily cancelled, then, by applying the changed situation to the first six months' period of the contract, it would appear that the reduction by reason of the change would have been the total production and sales of X, or 600,000 square feet for the period, making 100,000 square feet monthly. First party would then pay monthly upon 100,000 square feet, consisting of 50,000 square feet of lath, 33,333 square feet of wallboard and 16,666 square feet of plaster-
9291 board, until the expiration of the Haggerty patent or such earlier date that first party would have been relieved from paying upon X's production and sales if no such voluntary cancellation had occurred.

(3) The word "price" contained in the phrase "then first party will make said payment to second and third parties upon its own sales and price" contained in said provision, means the price of first party defined the same as the price of the licensee as defined at the bottom of page 6 and the top of page 7 of said contract.

(4) The price as defined on pages 6 and 7 of said contract shall be the licensee's delivered selling price less the deductions in said definition contained and less such other deductions as may be allowed the licensee in writing at the time the license agreement originally takes effect.

(5) The words contained in said provision "or such earlier date that first party would have been relieved from paying upon the licensee's production and sales if no such voluntary cancellation or change had occurred" mean if the license agreement had continued in its original form and would have terminated or licensee would have ceased to pay royalties thereunder, for any reason except first party's voluntary cancellation as above stated, then the date when that would have happened shall fix the date when first party shall not be required to pay anything further on account of said reduction and/or upon the production and sales of any licensee whose license agreement may have been so voluntarily cancelled or changed. To illustrate:

If the license agreement has been so voluntarily cancelled, then first party's obligation to pay anything on account of said reduction and/or on account of the production of any such licensee shall cease and determine in case of a holding that all of the claims of the Haggerty and Hite patents are invalid or in case the licensee shall cease to do business or cease to manufacture and sell plasterboard and gypsum wallboard or in any other case where the license would have terminated or the licensee would have ceased to pay any royalties or license fees to first party if the license had not been so voluntarily cancelled. If the license agreement has been so voluntarily changed but not cancelled, then the obligation of first party to pay anything on account of any such reduction and/or on account of any production and sales of the licensee shall cease and determine if the license agreement is terminated or the licensee ceases to pay any royalties or license fees to first party, for any reason whatsoever, except such a voluntary cancellation by first party.

This letter shall become a part of said contract with the same effect as if the same had been written therein.

Very truly yours,

UNITED STATES GYPSUM COMPANY

By S. L. AVERY, *Its President.*

ACCEPTED:

EUGENE HOLLAND,
ABEL DAVIS,
Receivers.

UNIVERSAL GYPSUM & LIME CO.

By OLIVER MITCHELL, *Vice-President.*

9292 This agreement, made and executed in triplicate at Chicago, Illinois, this 5th day of November, A. D. 1929, by and between the United States Gypsum Company, an Illinois corporation, of Chicago, Illinois, party of the first part, and Abel Davis and Eugene Holland, as Receivers in Equity for Universal Gypsum & Lime Co., a Delaware corporation having an office in Chicago, Illinois, pursuant to appointment by the United States District Court for the Northern District of Illinois, Eastern Division, on April 22, 1929, in a certain cause there pending, entitled International Cooperage Company, Inc., complainant, vs. Universal Gypsum & Lime Co., defendant, State Bank of Chicago

and William C. Miller, as trustees, intervenors, vs. Universal Gypsum & Lime Co., defendant, Equity number 9090, and and not individually, and Eugene Holland as receiver for the said Universal Gypsum & Lime Co. by appointment in any other United States District Court in proceedings now pending similar to the proceedings above described, and not individually, parties of the second part, and Universal Gypsum & Lime Co., a Delaware corporation of Chicago, Illinois, party of the third part, witnesseth, that:

Whereas, the first party is the owner of certain letters patent and applications for letters patent of the United States covering an improved gypsum wallboard and method or process of making the same, together with machines and appliances for the manufacture of such inventions, all as more specifically set forth in Exhibit A attached hereto and made a part hereof; and

Whereas, first party was the owner of all of the right, title and interest in and under letters patent of the
9293 United States number 1,029,328 and number 1,034,-746, known as the Utzman patents, the last of which expired August 6, 1929, which said Utzman patents were adjudicated by the United States District Court for the Northern District of Illinois, Eastern Division, and by the United States Circuit Court of Appeals for the Seventh Circuit (258 Fed. 647; 270 Fed. 542; 290 Fed. 798; 290 Fed. 800; 15 Fed. (2d) 704; see also 263 U. S. 713) and said courts decreed that said Utzman patents were valid and were infringed by the defendants named in said suits by reason of their making, using and selling plasterboard or gypsum wallboard having protected edges, and said District Court ordered perpetual injunctions and accountings against said defendants; and

Whereas, said Birdsey patent number 1,358,508 mentioned in said Exhibit A has been adjudicated by the United States District Court for the Northern District of Ohio, in Equity Case number 1621, and said court has decreed that said Birdsey patent is valid and was infringed by the defendant in said cause by reason of its making, using and selling plasterboard and/or gypsum wallboard having edges of the character disclosed in said patent, and said District Court ordered a perpetual injunction and accounting against the said defendant, which cause is now pending on appeal before the United States Circuit Court of Appeals for the Sixth Circuit; and

Whereas, first party asserted a substantial claim against third party for damages and profits because and on account of an alleged infringement of said patents; and first party agreed to grant a license to third party under said Utzman patents and said patents described in said Exhibit A to February 10, 1937, and to settle the said claim in consideration of the payment by third party to first party of
9294 a certain payment plus five per cent (5%) of third party's selling price and all plasterboard and/or gypsum wallboard manufactured and sold by it until August 6, 1929, and one and one-half per cent (1½%) of such selling price from August 6, 1929, to February 10, 1937; and

Whereas, the first party is the owner of all rights in and to an application for United States letters patent filed by Carlisle K. Roos, entitled "Cementitious Material," now pending in the United States Patent Office and covering the process of making a cellular product by forming a tenacious foam and mixing the foam with a cementitious material, and has heretofore acquired the sole and exclusive right in the United States of America (when gypsum is used as the main binding material) in that certain application for United States letters patent filed by Erik Christian Bayer, entitled "Methods of Manufacturing Porous Building Materials" and relating to a process broadly similar to that of said Roos application, which said applications with certain other Roos applications are set forth in Exhibit B hereto attached and made a part hereof, and which are all hereinafter referred to as said Roos and/or Bayer applications; and

Whereas, the second and third parties desire to acquire a license under said Roos and Bayer applications, and to obtain a license from first party to make, use and sell the inventions and improvements set forth and claimed in all of said patents and applications for letters patent described in said Exhibit A throughout the full term thereof; and

Whereas, the second and third parties are the owners of the entire right, title and interest in and to letters patent of the United States and the inventions and improvements described therein, as follows: Joseph F. Haggerty
9295 number 1,500,452, dated July 8, 1924, for plasterwall board, and Charles E. Hite number 1,230,297, dated June 19, 1917 for heat-insulating material and method of making the same, subject to an outstanding license to the

California Cedar Products Company under said Haggerty patent; and

Whereas, second and third parties claim that in the process of manufacturing plasterboard and gypsum wallboard; as heretofore practiced by it, first party, by the use of a carbohydrate or starchy substance, has infringed the claims of the said Haggerty and Hite patents, especially by the use of carbohydrates in the manufacture of plasterboard and gypsum wallboard, the core of which is made according to the claims and improvements set forth and claimed in said Roos and Bayer applications; and

Whereas, the parties hereto have agreed to settle and adjust all of said claims, including any claim which second parties or said third party may have against first party for infringment of said Haggerty and Hite patents, and as a part of said settlement said second parties have agreed to sell, assign, transfer and convey to first party the entire right, title and interest in and to said inventions, improvements and said letters patent known as the Haggerty and Hite patents as aforesaid, and first party has agreed to give to second and third parties a license to manufacture, use and sell the inventions and improvements set forth and claimed in said Roos and Bayer applications in the manufacture of gypsum plasterboard and/or gypsum wallboard, upon the terms and conditions hereinafter stated; and

Whereas, the United States District Court for the Northern District of Illinois, Eastern Division, by an order entered in said cause, Equity number 9090, and said
9296 other United States District Courts by orders entered therein in said receivership proceedings, have authorized the execution of this contract by said second and third parties.

Now, therefore, in consideration of the sum of One Dollar ($1.00) and other good and valuable considerations, receipt whereof is hereby acknowledged by each party from the other party, and of the mutual covenants and agreements hereinafter contained, the parties hereto do hereby agree as follows, to-wit:

1. Second and third parties have agreed to and do hereby sell, assign and set over unto first party, its successors and assigns, the entire right, title and interest for the United States of America, its territories and possessions, in and to the inventions and improvements set forth and claimed in

said Haggerty patent number 1,500,452 and said Hite patent number 1,230,297 and in and to said letters patent together with any and all reissues and extensions of said letters patent, subject only to an outstanding license dated May 28, 1926, to California Cedar Products Company under said Haggerty patent upon the terms and conditions as in said license contained. The execution and delivery of this agreement shall in itself constitute the consideration for the sale and assignment of said patents to first party and nothing done or omitted to be done hereunder or in connection with any of the agreements herein contained shall affect the title of first party in or to said patents, but the same shall forever remain the absolute property of first party.

First party, in consideration of the sale and assignment of said Haggerty and Hite patents to it does hereby agree to grant unto second and third parties a license as 9297 hereinafter set forth under said Roos and Bayer applications described in said Exhibit B and any patent which may be issued for or upon said inventions or applications, and to pay to second and third parties upon the execution hereof the sum of Thirty Thousand Dollars ($30,000.00).

First party does hereby agree also to pay to second and third parties an amount equal to one per cent (1%) of the selling price, less five cents (5¢) per one thousand (1,000) square feet if in board form or the equivalent thereto in weight if in other form, of such plasterboard, gypsum wallboard and/or other gypsum products as may be manufactured and sold by those licensees which may at any time hold a license from first party, its successors or assigns, to use the inventions and improvements set forth and claimed in said Haggerty and/or Hite patents and in any reissues or extensions thereof and upon which board or other products the said licensees are obliged to pay royalties or license fees for the use of said patents to first party, except second and third parties or their assigns. First party shall, on or before the last day of each calendar month, pay to second and third parties the amount then due under this agreement for all such plasterboard, gypsum wallboard and/or such other gypsum products, manufactured and sold by said licensees during the next preceding calendar month. The said amount shall be computed and paid only upon those products of any such licensee upon which it is obligated under the terms of its license to pay to first party.

license fees or royalties for the use of said Haggerty and/or Hite patents and during the time such license fees or royalties are paid to first party. The price upon which said amount shall be computed shall be such licensee's delivered selling price less freight, trucking, or other
9298 transportation charges paid by the customer and regular cash discounts allowed by such licensee, but where sales are made to jobbers or manufacturers or other wholesale distributors then the price for this purpose shall be such licensee's regular dealer price on the date of sale less freight, trucking or other transportation charges, and discount as aforesaid. Adjustments made by first party for claims made by the customer shall be deducted from the aggregate amount of such selling price in making said computation. The delay of any licensee to report its production of such products with the prices at which they were sold or to pay its license fees or royalties to first party shall extend the time of payment by first party to the extent of the amount to be determined from such report until licensee shall have made its report or first party shall otherwise have obtained the information necessary to make such payment and such licensee shall have paid its license fees or royalties therefor to first party.

If for any reason any such licensee shall cease to be a licensee of first party under said Haggerty and Hite patents or shall cease to be liable to pay the stipulated royalties or license fees agreed to be paid by it for the use of said Haggerty and Hite patents, then in either of such events the output of such licensee shall not thereafter be included in computing the amount to be paid by first party as aforesaid. If all of the claims of said Haggerty and Hite patents shall be held by a court of last resort upon final appeal or review to be invalid, or if for any reason said licensees shall cease to be licensees of first party under said Haggerty and Hite patents or cease to be liable to pay the stipulated royalties or license fees agreed to be paid by them for the use of said Haggerty and Hite patents
9299 and no other licensee shall at any time thereafter be licensed by first party, its successors or assigns, under said Haggerty and/or Hite patents in the manufacture of plasterboard and gypsum wallboard or other gypsum products, then in any such event the obligation of first party to make said payments as aforesaid shall thereupon cease and determine.

Nothing herein contained shall be construed to affect the right of first party to cancel, terminate, change or alter any license agreement with any licensee for the use of said Haggerty or Hite patents or to exercise any right or privilege it may have under any such license agreement or to waive any of the provisions thereof. If first party voluntarily cancels or changes any such license so that the number of feet of plasterboard or gypsum wallboard (except that sold for export) upon which first party is obligated to pay second and third parties under this agreement is thereby reduced, then first party will make said payment to second and third parties upon its own sales and price of plasterboard or gypsum wallboard to the extent of any such reduction, the extent of such reduction to be determined by taking licensee's production and sales during the first six (6) months' period of such license agreement and applying the effect which such cancellation or change would have had upon the number of feet of board upon which first party was required to make said payments to second and third parties if such cancellation or change had existed during said six (6) months' period, and one-sixth of the number of feet of each kind of board making up said reduction shall constitute the number of feet of each kind of board upon which first party is to pay each month until the expiration of said Haggerty patent or such earlier date that first party would have been relieved from paying upon the licensee's production and sales if no such voluntary cancellation or change had occurred. This provision shall not apply to cancellation of any such license agreement because of default of such licensee or in the exercise of
9300 any right or privilege first party may have under said license.

Second and third parties shall have the right to examine any reports made by any licensee of first party under said Haggerty and/or Hite patents, as well as any audits of the books and records of such licensee made or caused to be made by first party.

Second and third parties by separate instrument of even date herewith have executed and delivered to first party an assignment selling, assigning and setting over unto first party, its successors and assigns, their entire right, title and interest for the United States of America, its territories and possessions, in and to said inventions and improvements set forth and claimed in said Haggerty and

Hite patents, and said letters patent, together with any and all reissues and extensions thereof.

First party does hereby agree to assume and pay the obligations of third party to pay to Charles E. Hite of Philadelphia, installments maturing after the date hereof, of One Hundred Dollars ($100) per week during the remainder of the first period of six (6) years, commencing October 27, 1923, and One Hundred Dollars ($100) per week for a further period of five (5) years commencing at the expiration of said first period, as provided in that certain contract dated October 27, 1923, and made between the said Hite and The Gypsolite Company for the sale of said Hite patent to the latter, and on the same date guaranteed by third party, which contract shall be assigned to first party as of the date hereof, together with all advantages and benefits arising thereunder subsequent to the date hereof, but such assignment shall not affect the rights of second and/or third parties in any patent issued on any invention of said Charles E. Hite, other than said patent num-
9301 ber 1,230,297, acquired by them prior hereto.

The second and third parties do hereby release and discharge the first party and its subsidiaries from all claims or demands, whether for damages or profits or for both damages and profits, which the second and/or third parties now have or claim to have against them or any of them for or on account of any infringement of the said Haggerty and/or Hite patents by the first party or any of its said subsidiaries prior to the date hereof. The second and third parties do hereby further release and discharge any person or company receiving a license from first party under said Haggerty and/or Hite patents, from all claims and demands, whether for damages or profits or for both damages and profits, which the second and/or third parties now have against them or any of them for or on account of any infringement of the said Haggerty and/or Hite patents prior to the date hereof. It is understood that this agreement is made for the personal benefit of any such other person or company receiving such a license and shall not apply to any assignee of such licensee.

2. First party agrees promptly to disclose to second and third parties all information and formulae which it now has or may obtain relating to the process of making a cellular product through the formation of a tenacious foam and mixing the foam with a cementitious material as set

forth and claimed in said applications for letters patent filed by Carlisle K. Roos and Erik Christian Bayer, in so far as the same is or may be applied to gypsum, and including all information and formulae for the manufacture of gypsum plasterboard and gypsum wallboard embodying the inventions and improvements set forth and claimed in said Roos and Bayer applications, together with a description of the machines or appliances which it now
9302 has for making the same. It will assist second and third parties to make their plants ready for making plasterboard and gypsum wallboard embodying said claims and for practicing said process in the manufacture of said board by furnishing without cost to second parties the advice and instruction of first party's experts and information with respect to the purchase and cost of said machines and appliances.

3. First party has agreed and does hereby give and grant unto second and third parties an indivisible and non-exclusive right, license and privilege of using the process or processes and making and using the inventions and improvements set forth and claimed in said Roos and Bayer applications for letters patent of the United States described in said Exhibit B and in any patent or patents granted for or upon any of said inventions or applications in the manufacture of gypsum plasterboard and/or gypsum wallboard at the plants now owned and operated by second or third parties in the United States of America and/or at the plants now owned and operated by any of the present subsidiaries of third party in the United States of America and/or at any plants which may be built by second or third parties in the United States of America on any land now owned, leased or controlled by second or third parties and/or any of said present subsidiaries and/or on any land hereafter acquired, owned, leased or controlled by second or third parties or said present subsidiaries in the vicinity of land now owned, leased or controlled by them and not acquired from one engaged in the business of manufacturing and selling gypsum products, and of manufacturing at said plants, selling and using in the United States of America and the territories and possessions thereof gypsum plasterboard and/or gypsum wallboard manufactured at said plants, the body or core of which
9303 is made in accordance with the process or processes set forth and claimed in said Roos and Bayer applications for letters patent, or in any patent or patents

granted for or upon any of said inventions or applications, until the last to expire of any patent which may be granted for or upon any of said Roos or Bayer applications, including any extension and/or reissue thereof. This license shall not include the right to manufacture gypsum plasterboard or gypsum wallboard embodying said Roos and/or Bayer process at any plant or factory purchased or acquired by second or third parties or by any such subsidiary from any other person or company subsequent to the date hereof, without the express written consent of first party.

4. The first party has agreed to and does hereby grant and give unto second and third parties an indivisible and non-exclusive right, license and privilege of using the process or processes and making and using the inventions and improvements set forth and claimed in said Haggerty patent number 1,500,452, and said Hite patent number 1,230,297, in the manufacture of gypsum plasterboard and/or gypsum wallboard, blocks, pipe covering and other products which may come within the scope of said patents at the plants now owned and operated by second or third parties in the United States of America and/or at the plants now owned and operated by any of the present subsidiaries of third party in the United States of America and/or at any plants which may be built by second or third parties in the United States of America on any land now owned, leased or controlled by second or third parties and/or any of said present subsidiaries, and/or on any land hereafter acquired, owned, leased or controlled by second or third parties or said present subsidiaries
9304 in the vicinity of land now owned, leased or controlled by them and not acquired from one engaged in the business of manufacturing and selling gypsum products, and of manufacturing at said plants, selling and using in the United States of America and the territories and possessions thereof, gypsum plasterboard and/or gypsum wallboard and said other products, embodying the inventions and improvements set forth and claimed in said Haggerty and/or Hite patents for the full term of the last to expire of said letters patent, including any extensions and/or reissues thereof. This license shall not include the right to manufacture gypsum plasterboard or gypsum wallboard or any of said other products embodying the said Haggerty and/or Hite inventions, at any plant or factory purchased or acquired by second or third parties or by any such subsidiary from any other person

or company subsequent to the date hereof, without the express written consent of first party.

5. First party has agreed to and does hereby give and grant unto second and third parties an indivisible and non-exclusive right, license and privilege of using the process or processes and making and using the machines and/or inventions set forth and claimed in any and all of said patents and/or applications for letters patent described in said Exhibit A in the manufacture of gypsum plasterboard and/or gypsum wallboard at the plants or factories now owned and/or operated by second and third parties, or at any other plant or factory hereafter owned and/or operated or controlled by them or any subsidiary, associated or affiliated company of third party, and of manufacturing at any such place or places, selling and using in the United States of America and the territories and possessions thereof, gypsum plasterboard and/or gypsum wallboard manufactured at any such place
9305 or places and embodying the inventions and improvements set forth and claimed in said patents and/or applications for letters patent described in said Exhibit A for the full term of said letters patent, or of any letters patent which may be granted for or upon any of said applications described in said Exhibit A, including any extensions and/or reissues thereof.

6. It is expressly understood and agreed that each and all of the indivisible and non-exclusive rights, licenses and privileges aforesaid are granted upon condition that the first party shall have, and it hereby reserves, the right to determine and fix at any time and to change from time to time during the existence of said patents and so long as said licenses shall continue, th minimum price or prices at which second and third parties shall sell any plasterboard or gypsum wallboard manufactured by second and third parties by the use of any of the machines or appliances covered by any of said letters patent and which shall embody the inventions and improvements set forth and claimed in any of said patents which are presently issued, or any of said plasterboard, gypsum wallboard, blocks, pipe covering and/or other products manufactured by second and third parties and which shall embody the inventions and improvements set forth and claimed in either patent number 1,500,452 or patent number 1,230,297, or commencing with the date when a patent shall have been granted or issued for or upon any of the said Roos

or Bayer inventions and/or applications described in said Exhibit B, any of said plasterboard or gypsum wallboard manufactured by second and third parties, the body or core of which is made according to the process set forth and claimed in any patent granted for or upon any of said Roos or Bayer inventions and/or applications described in said Exhibit B; and in case first party shall exer-
9306 cise the rights so reserved, it shall first serve written notice of its intention so to do upon second and third parties, accompanied with a statement of the minimum price or prices at which second and third parties shall sell said gypsum plasterboard and/or gypsum wallboard or said other products, and thereafter shall give to second and third parties written or telegraphic notice of any change in such price or prices, and second and third parties expressly covenant and agree that they will, not, so long as this agreement shall continue in force and effect and after receipt of such notice, given in accordance with the terms and conditions hereof, directly or indirectly, sell or offer for sale any gypsum plasterboard or gypsum wallboard manufactured by them by use of any of the machines or appliances covered by any of said patents and which during the existence thereof shall embody the inventions and improvements set forth and claimed in any of said patents which are presently issued, or any gypsum plasterboard, gypsum wallboard, blocks, pipe-covering and/or other products manufactured by second and third parties and which during the existence thereof shall embody the inventions and improvements set forth and claimed in either patent number 1,500,452 or patent number 1,230,297 or any gypsum plasterboard or gypsum wallboard manufactured by second and third parties after a patent shall have issued upon any of the said Roos or Bayer inventions and/or applications described in said Exhibit B and during the existence thereof, the body or core of which is made according to the process set forth and claimed in any patent granted for or upon any of said Roos or Bayer inventions and/or applications described in said Exhibit B, at a price or prices less than that stated by first party in said notice or in any such written or telegraphic notice of a change in such price or prices.

9307 Such minimum price shall not be more than that price at which first party determines to sell plasterboard or gypsum wallboard or said other products embody-

ing the inventions and improvements set forth and claimed in said patents to its own like trade in the same market.

7. Second and third parties agree to pay to first party in fulfillment of the obligation of third party to pay one and one-half per cent (1½%) of its said selling price from August 6, 1929, to February 10, 1937, as aforesaid, in settlement and discharge of the said claim of first party against said third party and for the right, license and privilege of using the processes and making and using the machines and/or inventions in the manufacture of gypsum plasterboard and gypsum wallboard covered by said patents and applications for letters patent described in said Exhibit A, and for the privilege of manufacturing, using and/or selling plasterboard and/or gypsum wallboard embodying the inventions and improvements set forth and claimed in said patents and applications for letters patent described in said Exhibit A, an amount (hereinafter for convenience referred to as a license fee or royalty) equivalent to one and one-half per cent (1½%) of the selling price of second and third parties of all plaster board and gypsum wallboard of every kind, whether or not made by the use of said machines and/or embodying the inventions and improvements set forth and claimed in said letters patent or applications for letters patent, manufactured and sold by second and third parties between the date hereof and February 10, 1937, the date of the expiration of patent number 1,330,413 mentioned in said Exhibit A.

It is understood that upon the issuance or granting of a patent for or upon any of the said Roos or
9308 Bayer applications described in said Exhibit B, then after the expiration from the date of the issuance of any such patent of a term equivalent to the present unexpired term of the last to expire of the said Haggerty and Hite patents, second and third parties, in addition to the foregoing royalties or license fees, will pay to first party for the right, license and privilege of thereafter using the process set forth and claimed in said Roos and Bayer applications and of any patent granted or issued for or upon said applications, an amount (hereinafter for convenience referred to as a license fee or royalty) equivalent to one per cent (1%) of the selling price of second and third parties of all plasterboard and gypsum wallboard of every kind, whether or not embodying the inventions and improvements set forth and claimed in said Roos and Bayer applications, or any such patent issued for or upon the

same, manufactured and sold by second and third parties until the expiration of the last to expire of any patent granted or issued for or upon any of the said Roos or Bayer applications.

Second and third parties' "selling price" shall mean the delivered selling price of second and third parties, less freight paid by the customer and less regular cash discounts allowed by them to the customer.

8. It is further agreed that so long as the licenses provided for in paragraphs 3, 4 and 5 hereof shall remain in force between the parties hereto, or in case said licenses shall expire before the expiration of the patents specifically described in this paragraph and the said licenses shall have continued in force between the parties hereto for the full term hereof, then until the expiration of the patents specifically described in this paragraph, first party does hereby give and grant unto the second and third parties an in-
9309 divisible and non-exclusive right, license and privilege of making and using the inventions set forth and claimed in those certain patents known as the Birdsey Plasterboard Bundle Patent number 1,696,877, dated December 25, 1928, Utzman patent number 1,724,740, dated August 13, 1929, Birdsey patent number 1,730,113 dated October 1, 1929, and applications for letters patent serial numbers 329,581 filed December 31, 1928, and 296,354 filed July 30, 1928, and any patent which may be granted for or upon said applications, including any extensions and/or reissues thereof, at the plants or factories now owned and/or operated by second and third parties or at any other plants or factories hereafter owned and/or operated or controlled by second and third parties, or any subsidiary, associated or affiliated company of said third party, and of selling or using bundles of plasterboard and/or gypsum wallboard put up or bundled by second and third parties at any such place or places, according to the claims set forth and claimed in said patents and applications for letters patent in this paragraph described, upon the terms and conditions hereinafter stated.

Second and third parties agree to pay to first party for the right, license and privilege of making, using or selling the inventions set forth and claimed in said patents and applications in the next preceding paragraph described, in addition to the sums hereinabove set forth, an amount (here-

inafter referred to as a license fee or royalty) equivalent to ten cents (10¢) per one thousand (1,000) square feet of plasterboard and/or gypsum wallboard which is sold by second and third parties in bundles of any kind, whether or not the bundles shall be made according to the claims set forth and claimed in said patents, which said license fee or royalty shall be payable at the times and in accordance with
9310 the terms of paragraph 10 hereof. The term "bundle" shall not include unbundled material wired or strapped for purposes of transportation or unbundled material shipped for export or coastwise trade in fiber, wooden or other crates.

9. It is expressly understood and agreed that this contract and the licenses herein granted shall be personal to the second and third parties, and that the same or any right therein or hereunder shall not be sold, assigned or transferred without the written consent of first party or transferred by operation of law; Provided, However, that the same may be assigned by second and third parties to any company acquiring all of the assets and business or capital stock of third party or its plasterboard and wallboard business or its assets used in connection therewith, on condition that second and third parties shall first obtain an agreement in writing from any such assignee agreeing to assume all of the obligations of second and third parties under this agreement and to be bound by all of the terms and conditions thereof and shall deliver such agreement to first party. Second and third parties agree that in case of the sale of all of the assets and business or capital stock of third party or its plasterboard and wallboard business or its assets used in connection therewith, they will require the purchaser or purchasers thereof to assume in writing all the obligations of second and third parties hereunder and to agree to be bound by the terms and conditions hereof and deliver such agreement to first party. It is expressly understood, however, that if this agreement is assigned, as in this paragraph provided, the licenses granted in paragraphs 3 and 4 hereof and the rights extended under paragraph 22 hereof shall apply only to plants conveyed
9311 by second and third parties to such assignee and such plants as may be thereafter built by such assignee on land now owned, leased or controlled by second and/or third parties and not to any other plant or plants which such assignee may then have or build or acquire thereafter on

ground other than that now owned, leased or controlled by second and/or third parties. Second and third parties may, however, assign the right to receive the said sums agreed to be paid to them by first party hereunder separately, if desired, from the licenses herein granted, without the consent of first party.

10. Second and third parties agree to keep separate, full and accurate books of account and records showing the exact quantity of all plasterboard and gypsum wallboard manufactured and sold by them, as well as a separate record of all plasterboard and/or gypsum wallboard sold by them in bundles, and agree that at any time when they are required to pay any of said royalties or license fees under any of the licenses granted hereunder, in accordance with the terms hereof, they will, on or before the 20th day of each calendar month, render unto first party true written returns, verified under oath by second and third parties or their duly authorized agent, setting forth the quantity of all plasterboard and/or gypsum wallboard manufactured and sold by them during the preceding calendar month, and/or the quantity thereof put up and sold by them in bundles, together with the price or prices at which the same was sold and is to be accounted for hereunder, such written returns to be delivered to first party at its office in Chicago, Illinois, and second and third parties agree to pay to first party, on or before the 20th day of each calendar month, at the office of first party at Chicago, Illinois, the hereinbefore stipulated royalties or license fees which may
9312 then be due under this agreement on account of all of said plasterboard and/or gypsum wallboard manufactured and sold by them and/or put up and sold by them in bundles during the next preceding calendar month.

11. First party, or its duly authorized representative, shall at any time during the term hereof when second and third parties are required to pay any of said royalties in accordance with the terms hereof, have the right at all reasonable times during business hours to inspect the books of account and records of second and third parties, referred to in the next preceding paragraph hereof, including all records of every kind showing the quantity of said plasterboard and gypsum wallboard manufactured and sold by second and third parties and the quantity thereof put up and sold by them in bundles, and the price or prices at which the same was sold, and to make copies thereof and memo-

randa therefrom; Provided, However, that if at the time of any such examination second and third parties shall request it in writing, then such examination shall be made by a certified public accountant agreed upon between the parties hereto, in which event the expense thereof shall be borne one-half thereof by first party and one-half thereof by second and third parties. If the parties at any such time shall not agree upon the certified public accountant to make such examination, then first party shall name three certified public accountants of good standing, not directly or indirectly employed by it or in any other way connected with it. If second and third parties shall not accept any one of them, then first party shall have the right to make such examination itself.

12. Second and third parties agree that all plasterboard or gypsum wallboard manufactured and sold by them
9313 embodying the claims of any of said patents and/or applications for letters patent shall be distinctly marked with the word "patented" and/or "patent applied for," as the case may be, together with the numbers of any of said patents or applications specified by first party, the claims of which may be embodied in said plasterboard or gypsum wallboard, and in connection with said marking, second and third parties will further mark said board with the words "licensed under the above letters patent" and/or "licensed under pending applications for letters patent," as the case may be, which marking shall be plainly visible. Other products manufactured and sold by second or third parties protected under said Haggerty or Hite patents shall be similarly marked. Second and third parties further agree that all bundles put up and sold by them embodying the claims of said patents numbers 1,696,877, 1,724,740 and 1,730,113 and/or any of said applications serial numbers 329,581 and 296,354 shall be similarly marked, together with the numbers of said bundle patents and/or applications.

13. Having regard for the fact that there are or may be certain manufacturers of plaster or gypsum products, jobbers or other wholesale distributors of such products, who do not or may not manufacture gypsum wallboard or plasterboard but who desire or may desire to have gypsum wallboard or plasterboard manufactured for them, it is understood and agreed that second and third parties may manufacture for jobbers (being those who do not manufacture but buy and sell plasterboard or gypsum wallboard in

straight cars or in mixed cars with other building material and who do not sell at retail) gypsum wallboard or plasterboard embodying the inventions and improvements set forth and claimed in said letters patent or in any letters patent after the same shall have been issued or granted for or upon any of the said applications, and may, 9314 with the written consent of first party, manufacture for any such other manufacturer or other wholesale distributor, gypsum wallboard or plasterboard embodying the said inventions and improvements; Provided, However, that the said license fee or royalty to be paid to first party, as hereinbefore provided, shall be based upon all gypsum wallboard and plasterboard manufactured for and sold and invoiced to such other manufacturer, jobber or wholesale distributor, and upon the regular selling price of second and third parties of such plasterboard or gypsum wallboard to their regular dealer trade at the time of such sale and invoice, and shall not be based upon the price at which plasterboard or gypsum wallboard is sold and invoiced by second and third parties to such other manufacturer, jobber or wholesale distributor. Nothing hereinbefore contained in this agreement shall be construed to give second and third parties the right to manufacture gypsum plasterboard or gypsum wallboard, embodying the inventions and improvements set forth and claimed in any of said letters patent or in any letters patent after the same shall have been granted for or upon any of said applications, for said other manufacturers or wholesale distributors and to sell the same, without the written consent of first party.

14. Second and third parties covenant and agree that all of said gypsum plasterboard and gypsum wallboard manufactured and sold by them embodying the inventions and improvements set forth and claimed in any of said letters patent or patents issued upon any of said applications and commonly known in the trade as "seconds" shall be plainly invoiced as "seconds" and shall be plainly marked with a visible red stamp or label firmly fixed on each of said boards showing the word "seconds" in letters at least 9315 three (3) inches in height.

15. As one of the considerations for the indivisible and non-exclusive licenses herein and hereby granted, second and third parties hereby acknowledge the validity of said letters patent or of any letters patent which may be granted or issued for or upon said applications, forming

the subject-matter of said licenses, so long as said licenses shall remain in full force and effect, and agree that they will not at any time during the existence of said licenses, directly or indirectly, by themselves, through or together with another or others, contest the validity of any of said letters patent or the title thereto of first party. This paragraph shall apply only to plasterboard and/or gypsum wallboard in so far as all of said patents or patents issued upon any of said applications are concerned, except said Haggerty and Hite patents.

16. In the event that either party shall at any time neglect, fail or refuse to keep or perform any of the conditions or agreements herein to be kept by it and performed, then the other party, at its election, may serve upon the party in default written notice of intention to terminate the licenses herein granted, which notice shall specify the alleged neglect, failure or refusal, and if within thirty (30) days from the date of service of said notice the party in default shall not cure the default specified in said notice, then the other party may cancel and terminate the licenses herein granted by notifying the party in default in writing of its election so to do, without the necessity of any court action; Provided, However, that neither party shall be relieved thereby from any liability accrued at the time of such termination, and Provided Further that if the party upon whom said notice is served shall deny that it is in default, in whole or in part, as specified therein, then the party serving such notice shall not be privileged to cancel said licenses on account of the alleged default specified therein, provided the party upon whom said notice shall have been served shall within said thirty (30) day period perform the agreements and submit the question to arbitration, as in this paragraph hereinafter set forth. In case of any such denial, the party upon whom the notice shall have been served shall within said thirty (30) day period state in writing to the other party wherein and in what respect it denies the default specified in said notice, and shall at the same time make good any default specified therein which it does not deny, and appoint in writing one person as arbiter to arbitrate the question of whether or not it is in default in respect to that which it shall have denied as aforesaid, it being understood, however, that if the question shall be with respect to the amount of royalties or license fees to be paid hereunder, then the

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second and third parties shall first pay or offer to pay the amount of such license fees or royalties which they then admit is due and payable in accordance with the terms hereof, and the acceptance thereof by the first party shall not operate as a waiver of any of its rights hereunder or any claim it may have made in any notice served by it upon second parties. The party so serving said notice shall, after the other party shall have made good any default specified in said notice which it did not deny in writing as aforesaid, including the payment of royalties or license fees, if any, admitted to be due and payable hereunder, and within ten (10) days from the date of the appointment of said first arbiter in accordance with the terms hereof, appoint in writing another person as arbiter, and the two persons so appointed shall within ten (10) days or as soon as possible thereafter appoint in writing a third person as ar-
9317 biter. The three persons so appointed shall, within thirty (30) days from the date of the appointment of said last mentioned arbiter, or as soon as possible thereafter, decide whether or not the party upon whom said notice has been served is in default hereunder with respect to anything contained in said notice. The decision of a majority of the three arbiters so appointed shall constitute a final settlement of the said question and be binding and conclusive upon the parties hereto, and if it shall have been determined by a majority of the said arbiters that the party upon whom said notice was served is in default with respect to anything contained in said notice, and the party so found to have been in default shall fail or refuse to comply with the terms of the award or finding made by said arbiters within thirty (30) days from the date such award or finding shall have been made, the party serving said notice may, at its election, terminate and cancel the said licenses in writing. In the event of default hereunder by either party, and notice of such default is served by the other party as herein provided, and after service of such notice the party in default shall cure the same as hereinbefore provided, the same shall constitute a nullification of said notice to the same effect as if said notice had not been served. In case this contract shall be assigned in accordance with the terms hereof or third party shall become substituted for second parties as hereinafter stated, then if any such assignee or said third party shall at any time be adjudged a bankrupt while holding said license, then all of said licenses shall immediately be and become cancelled and

terminated, but first party shall not thereby be prevented from collecting any license fees or royalties accrued hereunder at the time of such termination. The waiver of any breach by either party shall not be interpreted as
9318 constituting a waiver of any further breach or breaches. Either party may proceed by action to specifically enforce this contract or any of the terms, conditions and covenants thereof by injunction or in such other manner as may be provided by law. The cancellation of said licenses for any reason whatsoever, shall not affect the title of first party in and to said Haggerty or Hite patents, and shall not affect the right of second and third parties to collect any sums due to them under the terms hereof.

17. Any notice to be given under the terms hereof may be served by either party hereto by mailing the same to the other party hereto, postage prepaid and registered, addressed to such party at its or their last known principal office. In case such notice is served upon first party or upon any corporation a party to this contract, then the same shall be addressed to an officer of first party or such other corporate party, as the case may be, directed to its last known principal office. The deposit of any such notice in the United States mails, postage prepaid, registered and so addressed, shall constitute service of notice hereunder.

18. It is understood and agreed that if at any time during the term hereof second and third parties shall, in the judgment of first party, suffer substantial detriment by reason of any infringement on the part of any person or persons of any of said letters patent or of any patent that may be granted upon said applications under which this license is granted, first party will afford second and third parties such reasonable protection as in the judgment of first party shall be necessary or proper.

The agreement to pay said royalties for said pat-
9319 ents described in Exhibit A is made in consideration of the settlement of said claim of first party against third party and the right and privilege which second and third parties have already exercised of using the said Utzman patents first above mentioned and for the right and privilege of using any and/or all of said patents described in said Exhibit A throughout the full term thereof. If a court of last resort upon final appeal or review, shall hold all claims of the patents granted for or upon said Roos and Bayer applications described in said Exhibit B invalid, or

second and/or third parties shall be permanently enjoined from manufacturing plasterboard and/or gypsum wallboard, the body or core of which is made according to the processes set forth and claimed in said Roos and Bayer applications, in such manner that they cannot practice in any way any of the inventions set forth in the said applications or patents issued thereupon, and such injunction shall be made final by a court of last resort upon final appeal or review, then from the time the court of last resort upon final appeal or review, shall decree all claims of said Roos and Bayer patents invalid or make said injunction permanent and final, second and third parties shall be relieved from the payment of said license fees or royalties amounting to one per cent (1%) of their said selling price agreed to be paid by them for the use of the process set forth and claimed in said Roos and Bayer applications described in said Exhibit B or any patent which may be issued therefor or thereupon commencing after the expiration of the said Haggerty and Hite patents as hereinbefore provided. If a court of last resort upon final appeal or review, shall decree all the claims of said patents mentioned in paragraph 8 hereof invalid or second and/or third parties shall be permanently enjoined from using the
9320 inventions of all of the claims of said patents described in said paragraph 8 so that they cannot practice in any way any of the inventions set forth therein, and such injunction shall be made final by a court of last resort upon final appeal or review, then from the time the court of last resort upon final appeal or review shall decree all said claims invalid or make said injunction permanent and final, second and third parties shall be relieved from the payment of the royalties or license fees agreed to be paid therefor as set forth in said paragraph 8 hereof.

19. In case first party shall at any time subsequent to the date hereof grant to any other person any license under said patents or applications for letters patent set forth in said Exhibit A and paragraph 8 hereof for the manufacture, sale or use of gypsum wallboard embodying the claims or inventions set forth or claimed in said patents or said applications set forth in said Exhibit A and paragraph 8 hereof, or shall grant any right under any such license, upon terms more favorable than those granted hereunder to second and third parties, then it will grant to second and third parties a license on the same terms, or extend to them

the same right granted to any such other person. This paragraph shall also apply to any license for the manufacture of plasterboard or gypsum wallboard under any patent issued for or upon said Roos and Bayer applications described in Exhibit B during the period second and third parties are required to pay license fees or royalties therefor to first party.

20. The terms "gypsum plasterboard," "gypsum wallboard" and "plasterboard" shall be understood to mean all board made of gypsum, by whatever name called, having the characteristics of gypsum plasterboard or gypsum wallboard, irrespective of the purpose for which the same
9321 may be sold or used, and shall include gypsum laths and all other gypsum boards.

21. If there shall have been invented or come into use any process which shall make the said process of forming a cellular product as set forth and claimed in said Roos and Bayer applications described in said Exhibit B obsolete or shall displace the same, and first party shall in its own manufacture permanently and wholly abandon the use of the subject-matter of the claims of said Roos and Bayer applications, it shall notify second and third parties in writing thereof and second and third parties may, upon thirty (30) days' written notice to first party after they shall have become required to pay to first party license fees or royalties in accordance with the terms hereof for the use of said Roos and Bayer applications or patents, cancel and terminate this license in so far as the same applies to said Roos and Bayer applications or to any patent or patents granted or issued therefor or thereupon, and from the date of such cancellation the royalties or license fees to be paid by second and third parties hereunder for the use of said Roos and Bayer applications or patents shall cease and determine; Provided, However, that if first party shall not in such event permanently and wholly abandon the use of said process, but shall only partially abandon the same, then to the extent or degree and for the term that first party shall abandon the same in its own manufacture second and third parties shall be relieved from the payment of license fees or royalties during the time they are required to pay the same in accordance with the terms hereof to the same extent, that is to say, if the first party shall in such
9322 event manufacture and sell any board, the core of which is made of gypsum of a particular size, kind

or make or for a particular purpose or use, without the use of said process embodied therein, then if second and third parties shall manufacture and sell the same board of the same particular size, kind or make and for the same purpose or use without the use of said process embodied therein, then second and third parties shall not be required to pay royalties or license fees upon such particular board for the term that first party shall manufacture and sell the same. The use by first party of any improvement which second and third parties have the right to use, as set forth in paragraph 22 hereof, or the manufacture of plasterboard or gypsum wallboard without the use of said process for sale only in foreign countries where first party has no patented rights in said process shall not constitute an abandonment of said process or a partial abandonment thereof within the meaning of this paragraph.

22. If first parties shall at any time during the existence of this agreement make or obtain any improvement for the formation of the bubble described in the process set forth in said Roos and Bayer applications and/or method of its introduction in the core of plasterboard or gypsum wallboard, and which improvement is covered by the claims of said Roos and/or Bayer applications, and shall itself use the same in its own manufacture, then if second and third parties shall pay the license fees or royalties hereinbefore stipulated during the time they are required to pay the same, the right, license or privilege contained in paragraph 3 hereof shall be extended to and include the use of said improvement in the manufacture by second and third
9323 parties of gypsum plasterboard or gypsum wallboard at the plants described in said paragraph 3, subject to all of the terms and conditions herein contained, except only that second and third parties shall not be required to pay any additional sum, royalty or license fee therefor. It is further understood that if a patent or patents shall be granted or issued for or upon said improvement, then all of the provisions of this agreement, as well as the provisions hereof reserving the right in first party to determine and fix at any time and to change from time to time the minimum price or prices at which second and third parties shall sell any gypsum plasterboard or gypsum wallboard manufactured by second and third parties and embodying the claims

of said patents, shall apply to the improvement set forth and claimed in any patent or patents granted or issued for or upon said improvement. First party will promptly notify second and third parties of the general adoption by it of any such improvement in its own manufacuture, together with such information as it may possess as to the use thereof in the manufacture of plasterboard and gypsum wallboard.

23. Second and third parties have investigated and fully satisfied themselves with respect to the inventions and improvements set forth in said patents and applications for letters patent, and the use thereof in their own manufacture, and have executed this agreement without relying upon any representations which may have been made by first party with respect thereto. No representations have been made by first party not expressly stated in this contract which second or third parties shall at any time have any right to rely upon as an inducement for making this contract or for any result or results to be obtained by
9324 second and third parties in their own plants by their use of the inventions and improvements set forth and claimed in any of said patents or applications for letters patent.

24. First party agrees at any time during the term hereof to extend to second and third parties upon their written request an indivisible and non-exclusive license or privilege to use said process or processes set forth and claimed in said Roos or Bayer applications described in said Exhibit B, in the manufacture in their said plants of any other gypsum product not specifically covered by this agreement and in which first party shall use the same in its own manufacture and to sell the same upon the payment to first party of one per cent (1%) of the selling price of second and third parties of all of said other gypsum product, whether or not embodying the said process in making the same, manufactured and sold by second and third parties, and upon the same terms as set forth herein and upon all of the conditions hereof, subject, however, to the requirement to pay said one per cent (1%) of said selling price, as in this paragraph mentioned, in which event in the agreement for the same there shall be substituted for said plasterboard and/or gypsum wallboard the name of such other product or products. An agreement containing all of said terms

and conditions shall be reduced to writing and signed by the parties hereto before the same shall become effective.

25. This contract shall from the date hereof supersede all prior license agreements at any time made between any of the parties hereto relating to the subject-matter hereof or any of the patents or applications for letters patent referred to in this agreement; Provided, However, that neither party shall be barred or prevented from recover-
9325 ing any claims which may have accrued under said prior license agreements prior to the date hereof, including all payments, royalties or license fees agreed to be paid thereunder up to the date of this agreement.

26. This agreement and all of the covenants and agreements herein contained shall be binding upon and inure to the benefit of the successors and assigns of the parties hereof, and second parties in their respective capacities as receivers or co-receivers in equity of third party by appointment of any United States District Court in proceedings now pending similar to proceedings just above described, but nothing in this paragraph contained shall be construed to permit an assignment hereof or any right hereunder by second and third parties except as hereinabove specifically provided. It is further understood that second and third parties shall be treated as one party and notice and payment to or by or other action taken by second parties during said receivership shall be regarded as notice and payment to or by or action taken by the second and third parties, and if the said receivers shall be discharged and the business and properties of third party delivered back to said third party, then this agreement together with all the terms and conditions hereof shall be binding upon and inure to the benefit of third party to the same effect as if second parties were not named as a party herein.

In witness whereof first party has hereunto caused these presents to be signed by its president, attested by its secretary and its corporate seal to be hereunto affixed, and second parties have signed, sealed and delivered
9326 these presents pursuant to said order of the United States District Court for the Northern District of Illinois, Eastern Division, in said cause and said orders in said other causes, and third party has caused these presents to be signed by its vice-president, attested by its secretary and its corporate seal to be hereunto affixed, pursuant to

said order of the United States District Court for the Northern District of Illinois, Eastern Division, in said cause and said orders in said other causes; all done in triplicate the day and year first above written.

UNITED STATES GYPSUM COMPANY,

By S. L. AVERY,
Its President.

ATTEST:

R. G. BEAR
Secretary.

[*SEAL*]

EUGENE HOLLAND,
ABEL DAVIS,
As Receivers in Equity for Universal Gypsum & Lime Co., and not individually.

UNIVERSAL GYPSUM & LIME CO.

By OLIVER MITCHELL,
Its Vice-President.

ATTEST:

FRANK G. KRUMHOLZ
Secretary.

[*SEAL*]

9327 EXHIBIT "A"

Utzman patent No. 1,330,413. Application filed September 3, 1918, granted February 10, 1920, expires February 10, 1937.

Birdsey patent No. 1,358,508. Application filed January 2, 1920, granted November 9, 1920, expires November 9, 1937.

Utzman patent No. 1,383,249. Application filed August 13, 1918, granted June 28, 1921, expires June 28, 1938.

Birdsey patent No. 1,383,254. Application filed July 29, 1918, granted June 28, 1921, expires June 28, 1938.

Birdsey patent No. 1,383,255. Application filed January 2, 1920, granted June 28, 1921, expires June 28, 1938.

Birdsey patent No. 1,384,298. Application filed August 19, 1920, granted July 12, 1921, expires July 12, 1938.

Birdsey patent No. 1,395,031. Application filed January 2, 1920, granted October 25, 1921, expires October 25, 1938.

Birdsey patent No. 1,395,032. Application filed January 2, 1920, granted October 25, 1921, expires October 25, 1938.

Birdsey patent No. 1,406,967. Application filed January 3, 1921, granted February 21, 1922, expires February 21, 1939.

Birdsey patent No. 1,427,939. Application filed January 3, 1921, granted September 5, 1922, expires September 5, 1939.

Birdsey patent No. 1,428,624. Application filed January 2, 1920, granted September 12, 1922, expires September 12, 1939.

Brookby patent No. 1,489,693. Application filed September 25, 1922, granted April 8, 1924, expires April 8, 1941.

Birdsey patent No. 1,514,827. Application filed October 6, 1921, granted November 11, 1924, expires November 11, 1941.

Birdsey patent No. 1,515,380. Original application filed January 2, 1920, granted November 11, 1924, expires November 11, 1941.

9328 Birdsey patent No. 1,518,243. Application filed September 22, 1922, granted December 9, 1924, expires December 9, 1941.

Birdsey patent No. 1,525,715. Application filed January 2, 1920, granted February 10, 1925, expires February 10, 1942.

Birdsey patent No. 1,526,307. Application filed October 10, 1921, granted February 10, 1925, expires February 10, 1942.

Utzman patent No. 1,540,045. Application filed March 14, 1923, granted June 2, 1925, expires June 2, 1942.

Birdsey patent No. 1,558,459. Application filed October 4, 1922, granted October 27, 1925, expires October 27, 1942.

Birdsey patent No. 1,561,635. Application filed January 3, 1921, granted November 17, 1925, expires November 17, 1942.

Armstrong patent No. 1,278,821. Application filed January 4, 1918, granted September 17, 1918, expires September 17, 1935.

Armstrong patent No. 1,348,387. Application filed March 15, 1919, granted August 3, 1920, expires August 3, 1937; application for reissue filed June 3, 1922, Serial No. 565,737, reissued January 24, 1928 as Reissue patent No. 16,860.

Armstrong patent No. 1,367,292. Application filed July 12, 1919, granted February 1, 1921, expires February 1, 1938; application for reissue filed June 9, 1922, Serial No. 567,205, reissued May 22, 1928 as Reissue Patent No. 16,969.

Utzman patent No. 1,455,127. Application filed June 14, 1922, granted May 15, 1923, expires May 15, 1940.

Utzman patent No. 1,492,588. Application filed June 14, 1922, granted May 6, 1924, expires May 6, 1941.

Williams patent No. 1,519,180. Application filed August 18, 1922, granted December 16, 1924, expires December 16, 1941.

Armstrong patent No. 1,556,575. Application filed October 1, 1921, granted October 13, 1925, expires October 13, 1942.

Armstrong patent No. 1,399,455. Application filed February 24, 1920, granted December 6, 1921, expires December 6, 1938.

9329 Tyler patent No. 1,417,117. Application filed November 15, 1919, granted May 23, 1922, expires May 23, 1939.

Birdsey patent No. 1,643,801. Application Serial No. 437,062, filed January 13, 1921, granted September 27, 1927, expires September 27, 1944.

Birdsey patent No. 1,650,930. Application Serial No. 506,676, filed October 10, 1921, granted November 29, 1927, expires November 29, 1944.

Birdsey patent No. 1,676,318. Application Serial No. 545,231, filed March 20, 1922, granted July 10, 1928, expires July 10, 1945.

Birdsey patent No. 1,710,915. Application Serial No. 555,672, filed April 19, 1922, granted April 30, 1929, expires April 30, 1946.

Smith patent No. 1,603,158. Application Serial No. 662,359, filed September 12, 1923, granted October 12, 1926, expires October 12, 1943.

Birdsey patent No. 1,666,161. Application Serial No. 737,237, filed September 12, 1924, granted April 17, 1928, expires April 17, 1945.

Utzman patent No. 1,631,108. Application Serial No. 750,224, filed November 17, 1924, granted May 31, 1927, expires May 31, 1944.

Brookby & Absmeier patent No. 1,689,322. Application Serial No. 91,297, filed March 1, 1926, granted October 30, 1928, expires Oct. 30, 1945.

Armstrong patent No. 1,701,291. Application Serial No. 310,470, filed July 12, 1919, granted February 5, 1929, expires February 5, 1946.

Utzman patent No. 1,638,280. Application Serial No. 374,833, filed April 19, 1920, granted August 9, 1927, expires August 9, 1944.

Armstrong patent No. 1,641,611. Application Serial No. 377,421, filed April 29, 1920, granted September 6, 1927, expires September 6, 1944.

Speer patent No. 1,686,671. Application Serial No. 427,044, filed November 29, 1920, granted October 9, 1928, expires October 9, 1945.

Speer patent No. 1,641,648. Application Serial No. 427,045, filed November 29, 1920, granted September 6, 1927, expires September 6, 1944.

Mehlhope patent No. 1,604,707. Application Serial No. 473,288, filed May 28, 1921, granted October 26, 1926, expires October 26, 1943.

9330 Gustafson patent No. 1,665,168. Application Serial No. 509,366, filed December 2, 1919, renewed October 21, 1921 granted April 3, 1928, expires April 3, 1945.

Kohler, et al patent No. 1,673,944. Application Serial No. 540,412, filed March 2, 1922, granted June 19, 1928, expires June 19, 1945.

Utzman patent No. 1,703,183. Application Serial No. 581,362, filed August 12, 1922, granted February 26, 1929, expires February 26, 1946.

Birdsey Patent No. 1,718,890. Application Serial No. 583,795, filed August 23, 1922, granted June 25, 1929, expires June 25, 1946.

Utzman application Serial No. 477,371, filed June 14, 1921, finally allowed April 26, 1929. Patent No. 1,731,116 will issue October 8, 1929.

Knode application Serial No. 590,358. Filed September 25, 1922.

Utzman application Serial No. 581,361. Filed August 12, 1922.

Williams application Serial No. 582,606. Filed August 18, 1922.

9331 EXHIBIT "B"

**Roos application Serial No. 733,197, filed August 20, 1924.

Bayer application Serial No. 661,723, filed September 8, 1923.

**Roos application Serial No. 3477, filed January 19, 1925.

Roos application Serial No. 142,155, filed October 16, 1926.

** Both are prior applications to Roos patent #2079565 issued May 4, 1937 on application #35527 filed 6-8-1925 and renewed 2-18-1931.

9332 *Government's Exhibit No. 7*

LICENSE AGREEMENT

This Agreement made this 21st day of October, A.D. 1929, by and between the United States Gypsum Company, an Illinois corporation, of Chicago, Illinois, hereinafter referred to as Licensor, and Atlantic Gypsum Products Company a New Hampshire corporation, of Portsmouth, New Hampshire, hereinafter referred to as Licensee, Witnesseth, That

Whereas, Licensor is the owner of certain letters patent and applications for letters patent of the United States covering an improved gypsum wallboard and method or process of making the same, together with machines and appliances for the manufacture of such inventions which, with certain other patents, are more specifically set forth in Exhibit A attached hereto and made a part hereof; and

Whereas, Licensor was the owner of all of the right, title and interest in and under letters patent of the United States number 1,029,338 and number 1,034,746 known as the Utzman Patents, the last of which expired August 6, 1929, which said Utzman Patents were adjudicated by the United States District Court for the Northern District of Illinois, Eastern Division, and by the United States Circuit Court of Appeals for the Seventh Circuit, and were decreed by said courts as valid and having been infringed by the defendants named in said suits; and

Whereas, Birdsey Patent number 1,358,508, mentioned in said Exhibit A, was decreed by the United States District Court for the Northern District of Ohio as valid and infringed by the defendant in said cause by reason
9333 of its having made, used and sold plasterboard and/or gypsum wallboard with edges of the character disclosed in said patent, and said District Court ordered a perpetual injunction and accounting against defendant, which cause is now pending on appeal before the United States Circuit Court of Appeals for the Sixth Circuit; and

Whereas, Licensor is the owner of a new process disclosed in that certain application for United States letters patent filed by Carlisle K. Roos, entitled "Cementitious Material," now pending in the United States Patent Office

and covering the process of making a cellular product, which comprises forming a tenacious foam and mixing the foam with cementitious material, and of certain other applications filed by said Roos covering specific employment of said invention, and Licensor has heretofore acquired the sole and exclusive rights in the United States of America (when gypsum is used as the main binding material) in that certain application for United States letters patent described in Exhibit A filed by Erik Christian Bayer, entitled "Methods of Manufacturing Porous Building Materials," and relating to a process broadly similar to that of said first mentioned Roos application, which said Roos and Bayer applications are described and set forth in said Exhibit A; and

Whereas, Licensor has agreed to purchase that certain Haggerty Patent number 1,500,452, dated July 8, 1924, and that certain Hite Patent number 1,230,297, dated June 19, 1917, both mentioned in said Exhibit A, subject to approval of the United States District Court for the Northern District of Illinois, Eastern Division thereof, and other
9334 United States district courts in receivership proceedings therein pending against the present owner of said patents; and

Whereas, gypsum wallboard or plasterboard manufactured by Licensee is made by the use of the machines or according to the processes or embodying the claims of some or all of said patents and applications for letters patent set forth in said Exhibit A, and Licensee desires to include in its manufacture the inventions and improvements set forth and claimed in said Roos and Bayer applications and said Haggerty and Hite patents, and to obtain a license from Licensor to make, use and sell the inventions and improvements set forth and claimed in all of said patents and applications for letters patent set forth in said Exhibit A throughout the full term thereof; and

Whereas, Licensor has agreed to grant said License and to make certain disclosures as to the said Roos and Bayer applications referred to in said Exhibit A, upon the terms and conditions hereinafter stated;

Now, Therefore, in consideration of the sum of One Dollar and other good and valuable considerations, the receipt whereof is hereby acknowledged from each party

to the other party, and in consideration of the mutual covenants and agreements hereinafter contained, the parties hereto do hereby agree as follows, to-wit:

1. Licensor agrees promptly to disclose to Licensee all information and formulae which it now has or may obtain relating to the process of making a cellular product through the formation of a tenacious foam and mixing the foam with a cementitious material, as set forth and claimed in said applications for letters patent filed by Carlisle K. Roos and Erik Christian Bayer, in so far as the same
9335 is or may be applied to gypsum, and including all information and formulae for the manufacture of gypsum plasterboard and gypsum wallboard embodying the inventions and improvements set forth and claimed in said Roos and Bayer applications, together with a description of the machines or appliances which it now has for making the same. It will assist Licencee to make its plant ready for practicing said process in the manufacture of plasterboard and gypsum wallboard by furnishing without cost to Licensee the advice and instruction of Licensor's experts and information with respect to the purchase and cost of said machines and appliances.

2. Licensor has agreed to and does hereby give and grant unto Licensee an indivisible and non-exclusive right, license and privilege of using the process or processes and making and using the machines and/or inventions set forth and claimed in any and all of said patents and/or applications for letters patent set forth in Exhibit A attached hereto in the manufacture of gypsum plasterboard and/or gypsum wallboard at the plants or factories now owned and/or operated by Licensee, or at any other plant or factory hereafter owned and/or operated or controlled by it or any subsidiary, associated or affiliated company, and of manufacturing at any such place or places, selling and using in the United States of America and the territories and possessions thereof gypsum plasterboard or gypsum wallboard manufactured at any such place or places and embodying the inventions and improvements set forth and claimed in said patents and/or applications for letters patent described in said Exhibit A, for
9336 the full term of said letters patent or of any letters patent which may be granted for or upon any of said applications, including any extensions and/or reissues thereof.

It is expressly understood and agreed that the indivisible and non-exclusive right, license and privilege aforesaid is granted upon condition that the Licensor shall have and it hereby reserves the right to determine and fix at any time and to change from time to time during the existence of said patents and so long as said license shall continue, the minimum price or prices at which Licensee shall sell any plasterboard or gypsum wallboard manufactured by Licensee by use of any of the machines or appliances covered by any of said letters patent and which shall embody the inventions and improvements set forth and claimed in any of said patents which are presently issued, or any of said plasterboard or gypsum wallboard manufactured by second parties and which shall embody the inventions and improvements set forth and claimed in either patent number 1,500,452 or patent number 1,230,297, or commencing with the date when a patent shall have been granted or issued for or upon any of the said Roos or Bayer inventions and/or applications any of said plasterboard or gypsum wallboard manufactured by Licensee, the body or core of which is made according to the process set forth and claimed in any patent granted for or upon any of said Roos or Bayer inventions and/or applications, and in case Licensor shall exercise the right so reserved, it shall first serve written notice of its intention so to do upon Licensee, accompanied with a statement of the minimum price or prices at which Licensee shall sell said gypsum plasterboard or gypsum wallboard, and
9337 thereafter shall give Licensee written or telegraphic notice of any change in such price or prices, and Licensee expressly covenants and agrees that it will not, so long as this agreement shall continue in force and effect and after receipt of such notice given in accordance with the terms and conditions hereof, directly or indirectly, sell or offer for sale any gypsum plasterboard or gypsum wallboard manufactured by it by use of any of the machines or appliances covered by any of said patents and which during the existence thereof shall embody the inventions and improvements set forth and claimed in any of said patents which are presently issued, or any gypsum plasterboard or gypsum wallboard manufactured by second parties and which during the existence thereof shall embody the inventions and improvements set forth and claimed in either patent number 1,500,452 or patent number 1,230,297,

or any gypsum plasterboard or gypsum wallboard manufactured by Licensee after a patent shall have issued upon any of the said Roos or Bayer inventions and/or applications and during the existence thereof, the body or core of which is made according to the process set forth and claimed in any patent granted for or upon any of said inventions and/or applications, at a price or prices less than that stated by Licensor in said notice or in any such written or telegraphic notice of a change in such price or prices.

Said minimum price shall not be more than that price at which Licensor determines to sell plasterboard or gypsum wallboard embodying the inventions and improvements set forth and claimed in said patents to its own like trade in the same market.

9338 3. Licensee agrees to pay to Licensor for said disclosures, information and assistance and the agreements of Licensor herein contained, and for the right, license and privilege of using the processes and making and using the machines and/or inventions in the manufacture of plasterboard and gypsum wallboard covered by said patents and applications for letters patent described in said Exhibit A, and for the privilege of manufacturing, using and/or selling plasterboard and gypsum wallboard embodying the inventions and improvements set forth and claimed in said patents and applications for letters patent, an amount (hereinafter for convenience referred to as a license fee or royalty) equivalent to three and one-half per cent (3½%) of the selling price of Licensee of all plasterboard and gypsum wallboard of every kind, whether or not made by the use of said machines and/or embodying the inventions and improvements set forth and claimed in said letters patent or applications for letters patent, manufactured and sold by Licensee between the date hereof and February 10, 1937, the date of the expiration of patent number 1,330,413 mentioned in said Exhibit A, and thereafter an amount equivalent to two per cent (2%) of the selling price of Licensee of all such plasterboard and gypsum wallboard manufactured and sold by it between February 10, 1937, and July 8, 1941, the date of the expiration of said patent number 1,500,452, and thereafter an amount equivalent to one per cent (1%) of the selling price of Licenses of all such plasterboard and gypsum wallboard manufactured and sold by it between

July 8, 1941, and the date of the expiration of the last to expire of any patent granted or issued for or upon any of the said Roos or Bayer applications; Provided, How-
9339 ever, that if no patent shall have been granted or issued for or upon any of said Roos or Bayer applications covering said process referred to in paragraph 1 hereof, within two (2) years from the date hereof, then commencing with the end of said two (2) year period the said license fees or royalties agreed to be paid by Licensee shall be reduced by one per cent (1%) of Licensee's said selling price until such patents shall have been granted or issued for or upon any of said Roos and Bayer applications, at which time Licensee shall again commence to pay the full amount of said license fees or royalties until the date of the expiration of the last to expire of any such patent or patents. If at the time of the execution of this contract Licensee's plant shall not be equipped to practice the process set forth and claimed in said Roos or Bayer applications in the manufacture of plasterboard or gypsum wallboard, then Licensee shall pay as such license fees or royalties two and one-half per cent (2½%) of said selling price between the date hereof and January 1, 1930, or such earlier date as Licensee shall make its plant ready to practice said process in the manufacture of said board, and the payment of three and one-half per cent (3½%) of said selling price and said period of two (2) years in this paragraph mentioned shall commence on January 1, 1930, or such earlier date as Licensee shall have made its plant ready as aforesaid. The amount of one per cent (1%) of said selling price included in said royalties or license fees is the amount agreed to be paid by Licensee for the use of said Haggerty and Hite patents.

Licensee's selling price shall mean the delivered selling price of Licensee, less freight paid by the customer and less regular cash discounts allowed by Licensee.

4. It is further agreed that so long as the license provided for in paragraph 2 hereof shall remain in force
9340 between the parties hereto, or in case the license granted under paragaph 2 hereof shall expire before the expiration of the patents specifically described in this paragraph, and the said license granted under paragraph 2 shall continue in force between the parties hereto for the full term of the last to expire of any of said patents described in said Exhibit A, or of any patent or patents granted for or upon any application described in said

Exhibit A, then until the expiration of the patents specifically described in this paragraph, Licensor does hereby give and grant unto the Licensee an indivisible and non-exclusive right, license and privilege of making and using the inventions set forth and claimed in those certain patents known as the Birdsey Plasterboard Bundle Patent number 1,696,877, dated December 25, 1928, Utzman Patent number 1,724,740 dated August 13, 1929, Birdsey Patent number 1,730,113 dated October 1, 1929, and applications for letters patent serial numbers 329,581 filed December 31, 1928, and 296,354 filed July 30, 1928, and any patent which may be granted for or upon said applications, including any extensions and/or reissues thereof, at the plants or factories now owned or operated by Licensee or at any other plant or factory hereafter owned and/or operated and controlled by Licensee or any subsidiary, associated or affiliated company of Licensee, and of selling or using bundles of plasterboard and/or gypsum wallboard put up or bundled by Licensee at any such place or places according to the claims set forth and claimed in the said patents and applications for letters patent in this paragraph described, upon the terms and conditions hereinafter stated.

Licensee agrees to pay to Licensor for the right, license and privilege of making, using or selling the inventions set forth and claimed in said patents and applications in the next preceding paragraph described, in addition to the sums hereinabove set forth, an amount (hereinafter referred to as a license fee or royalty) equivalent to ten cents (10¢) per one thousand (1,000) square feet of plasterboard and/or gypsum wallboard which is
9341 sold by Licensee in bundles of any kind, whether or not the bundles shall be made according to the claims set forth and claimed in said patents, which said license fee or royalty shall be payable at the times and in accordance with the terms of paragraph 6 hereof. The term "bundle" shall not include unbundled material wired or strapped for purpose of transportation or unbundled material shipped for export or coastwise trade in fiber, wooden or other crates.

5. It is expressly understood and agreed that the license herein granted shall be personal to the Licensee, and that the same or any right herein or thereunder shall not be sold or assigned or transferred without the written consent of Licensor, or transferred by operation of law; Provided,

However, that the same may be assigned by Licensee to any company acquiring all the assets and business or all of the capital stock of Licensee, on condition that Licensee shall first obtain an agreement in writing from any such assignee agreeing to assume all of the obligations of Licensee under this agreement and to be bound by all of the terms and conditions hereof and shall deliver such agreement to Licensor. Licensee agrees not to sell all of its assets and business or all of its capital stock or to transfer and convey its plasterboard and/or wallboard business, or its assets used in connection therewith, without requiring the purchaser or purchasers thereof to assume, in writing, all of the obligations of Licensee hereunder, and to agree to be bound by all of the terms and conditions of this contract, and deliver such agreement to Licensor.

6. Licensee agrees to keep separate full and accurate books of account and records showing the exact 9342 quantity of all plasterboard and gypsum wallboard manufactured and sold by it, as well as a separate record of all plasterboard and/or gypsum wallboard sold by it in bundles, and agrees that on or before the twentieth day of each calendar month it will render unto Licensor true written returns verified under oath by an officer or other agent of Licensee, setting forth the quantity of all plasterboard and/or gypsum wallboard manufactured and sold by it during the preceding calendar month and the quantity thereof put up and sold by it in bundles, together with the price or prices at which the same was sold and is to be accounted for hereunder, such written returns to be delivered to Licensor at its office in Chicago, Illinois, and Licensee agrees to pay to Licensor on or before the 20th day of each calendar month at the office of Licensor at Chicago, Illinois, the hereinbefore stipulated royalties or license fees which may then be due under this agreement on account of all said plasterboard and/or gypsum wallboard manufactured and sold by it and put up and sold by it in bundles during the next preceding calendar month.

7. Licensor, or its duly authorized representative, shall have the right at all reasonable times during business hours to inspect the books of account and records of Licensee referred to in the next preceding paragraph hereof, including all records of every kind showing the quantity of said plasterboard and gypsum wallboard manufactured and sold by it and the quantity thereof put up and sold by it

in bundles and the price or prices at which the same was sold, and to make copies thereof and memoranda therefrom; Provided, However, that if at the time of any such examination Licensee shall request it in writing, then such examination shall be made by a certified public accountant agreed upon between the parties hereto, in which event the expense thereof shall be borne equal-
9343 ly by both parties. If the parties at any such time shall not agree upon the certified public accountant to make such examination, then Licensor shall name three certified public accountants of good standing not directly or indirectly employed by it or in any other way connected with it, and if Licensee shall not accept any one of them, then Licensor shall have the right to make such examination itself.

8. Licensee agrees that all plasterboard or gypsum wallboard manufactured and sold by it embodying the claims of any of said patents and/or applications for letters patent shall be distinctly marked with the word "Patented" and/or "Patent Applied For," as the case may be, together with the numbers of any of said patents or applications specified by Licensor, the claims of which may be embodied in said plasterboard or gypsum wallboard, and in connection with said marking Licensee will further mark said board with the words "Licensed Under The Above Letters Patent" and/or "Licensed Under Pending Applications for Letters Patent," as the case may be, which marking shall be plainly visible. Licensee further agrees that all bundles put up and sold by it embodying the claims of any of said patents numbers 1,696,877, 1,724,740 and 1,730,113 and/or any of said applications serial numbers 329,581 and 296,354 shall be similarly marked together with the numbers of said bundle patents and/or applications.

9. Having regard for the fact that there are or may be certain manufacturers of plaster or gypsum products, jobbers or other wholesale distributors of such products, who do not or may not manufacture gypsum wallboard or plasterboard but who desire or may desire to have gypsum wallboard or plasterboard manufactured for them, It Is Understood And Agreed that Licensee may manufacture for jobbers (being those who do not manufacture but buy and sell plasterboard or gypsum wallboard in straight

cars or in mixed cars with other building material
9344 and who do not sell at retail) gypsum wallboard
or plasterboard embodying the inventions and improvements set forth and claimed in said letters patent or in any letters patent after the same shall have been issued, granted for or upon any of the said applications and may with the written consent of first party manufacture for any such other manufacturer or other wholesale distributor, gypsum wallboard or plasterboard embodying the said inventions and improvements; Provided, However, that the said license fee or royalty to be paid to Licensor as hereinbefore provided shall be based upon all gypsum wallboard and plasterboard manufactured for and sold and invoiced to such other manufacturer, jobber or wholesale distributor and upon the regular selling price of Licensee of such plasterboard or gypsum wallboard to its regular dealer trade at the time of such sale and invoice, and shall not be based upon the price at which plasterboard or gypsum wallboard is sold and invoiced by Licensee to such other manufacturer, jobber or wholesale distributor. Nothing hereinbefore contained in this agreement shall be construed to give Licensee the right to manufacture gypsum plasterboard or gypsum wallboard embodying the inventions and improvements set forth and claimed in any of said letters patent or in any letters patent after the same shall have been granted for or upon any of said applications for said other manufacturers or wholesale distributors and to sell the same, without the written consent of Licensor.

10. Licensee covenants and agrees that all of said gypsum plasterboard and gypsum wallboard manufactured and sold by it embodying the inventions and improvements set forth and claimed in any of said Letters patent or patents issued upon any of said applications and commonly
known in the trade as "Seconds" shall be plainly
9345 invoiced as "Seconds" and shall be plainly marked
with a visible red stamp or label firmly fixed on each of said boards showing the word "Seconds" in letters at least three inches in height.

11. As one of the considerations for the indivisible and non-exclusive license herein and hereby granted, Licensee hereby acknowledges the validity of said letters patent or of any letters patent which may be granted or issued for or upon said applications, forming the subject-matter of said license so long as said license shall remain

in full force and effect, and agrees that it will not at any time during the existence of said license, directly or indirectly, by itself, through or together with another or others, contest the validity of either or any of said letters patent or the title thereto of Licensor.

12. In the event that either party shall at any time neglect, fail or refuse to keep or perform any of the conditions or agreements herein to be kept by it and performed, then the other party, at its election, may serve upon the party in default written notice of intention to terminate this license, which notice shall specify the alleged neglect, failure or refusal, and if within thirty (30) days from the date of delivery of said notice the party in default shall not cure the default specified in said notice, then the other party may cancel and terminate this agreement by notifying the party in default in writing of its election so to do, without the necessity of any court action: Provided, However, that neither party shall be relieved thereby from any liability accrued at the time of such termination; and Provided Further, that if the party upon whom said notice is served shall deny that it is in default in whole or in part, as specified therein, then the party serving such notice shall not be privileged to cancel this contract on account of the alleged default specified
9346 therein, provided the party upon whom said notice shall have been served shall within said thirty (30) day period perform the agreements and submit the question to arbitration, as in this paragraph hereinafter set forth. In case of any such denial the party upon whom the notice shall have been served shall within said thirty (30) day period state in writing to the other party wherein and in what respect it denies the default specified in said notice and shall at the same time make good any default specified therein which it does not deny and appoint in writing one person as arbiter to arbitrate the question of whether or not it is in default in respect to that which it shall have denied as aforesaid, it being understood, however, that if the question shall be with respect to the amount of royalties or license fees to be paid hereunder, then the Licensee shall first pay or offer to pay the amount of such license fees or royalties which it then admits is due and payable in accordance with the terms hereof, and the acceptance thereof by the Licensor shall not operate as a waiver of any of its rights hereunder or of any claim it may have made in any notice served by it upon Licensee.

The party so serving said notice shall, after the other party shall have made good any default specified in said notice which it did not deny in writing as aforesaid, including the payment of royalties or license fees, if any, admitted by it to be due and payable hereunder, and within ten (10) days from the date of the appointment of said first arbiter in accordance with the terms hereof, appoint in writing another person as arbiter, and the two persons so appointed shall within ten (10) days or as soon as possible thereafter appoint in writing a third person as arbiter. The three persons so appointed shall, within thirty (30) days from the date of the appointment of said last mentioned arbiter, or as soon as possible thereafter, decide whether or not the party upon whom said notice
9347 has been served is in default hereunder with respect to anything contained in said notice. The decision of a majority of the three arbiters so appointed shall constitute a final settlement of the said question and be binding and conclusive upon both the Licensor and the Licensee, and if it shall have been determined by a majority of the said arbiters that the party upon whom said notice was served is in default with respect to anything contained in said notice and the party so found to have been in default shall fail or refuse to comply with the terms of the award or finding made by said arbiters within thirty (30) days from the date such award or finding shall have been made, the party serving said notice may at its election terminate and cancel this agreement in writing. In the event of default hereunder by either party and notice of such default is served by the other party as herein provided, and after service of such notice the party in default shall cure the same as hereinbefore provided the same shall constitute a nullification of said notice to the same effect as if said notice had not been served. In case at any time the Licensee shall be adjudged a bankrupt, then the license hereunder shall immediately be and become canceled and terminated, but the Licensor shall not thereby be prevented from collecting all license fees or royalties accrued hereunder at the time of such termination. The waiver of any breach by either party shall not be interpreted as constituting a waiver of any further breach or breaches. Either party may proceed by action to specifically enforce this contract or any of the terms, conditions and covenants thereof by injunction or in such other manner as may be provided by law.

13. Any notice to be given under the terms hereof may be served by the Licensor or the Licensee by mailing the same to the other party hereto, postage prepaid and registered, addressed to any of its officers at its
9348 last known principal office, and the deposit of any such notice in the United States mails, postage prepaid and so addressed, shall constitute service of notice hereunder. Any telegraphic notice given under paragraph 2 hereof shall be confirmed in writing in the ordinary course of business.

14. It Is Understood And Agreed that if at any time during the term hereof the Licensee shall, in the judgment of the Licensor, suffer substantial detriment by reason of any infringement on the part of any person or persons of any of said letters patent or of any patent that may be granted upon said applications, under which this license is granted, the Licensor will afford the Licensee such reasonable protection as in the judgment of the Licensor shall be necessary or proper.

If a court of last resort upon final appeal or review shall decree all the claims of the patents granted for or upon said Roos and Bayer applications invalid or Licensee shall be permanently enjoined from manufacturing plasterboard and gypsum wallboard, the body or core of which is made according to the process set forth and claimed in said Roos and Bayer applications in such manner that they cannot practice in any way any of the inventions set forth in the said applications, and such injunction shall be made final by a court of last resort upon final appeal or review, then from the time the court of last resort upon final appeal or review shall decree that all the claims of the patents granted or issued for or upon said Roos and Bayer applications are invalid, or make such injunction permanent and final, the license fees or royalties to be paid by Licensee hereunder shall be reduced by one per cent (1%) of said selling price, or if a court of last resort upon final appeal or review shall decree that all the claims of said Haggerty and
9349 Hite patents are invalid or Licensee shall be permanently enjoined from manufacturing plasterboard and gypsum wallboard embodying the inventions and improvements set forth and claimed in said Haggerty and Hite patents in such manner that they cannot practice in any way any of the inventions set forth in said patents, and such injunction shall be made final by a court of last

resort upon final appeal or review, then from the time the court of last resort upon final appeal or review shall decree all claims of said Haggerty and Hite patents invalid or make said injunction permanent and final, the said license fees or royalties agreed to be paid by Licensee for said Haggerty and Hite patents shall cease and determine.

15. In case Licensor shall, subsequent to the effective date hereof, grant to any other person except Abel Davis and Eugene Holland, receivers of the Universal Gypsum & Lime Co. or their successors or to the said Universal Gypsum & Lime Co., any license under said patents or applications for letters patent set forth in said Exhibit A and paragraph 4 hereof for the manufacture, sale or use of gypsum plasterboard or gypsum wallboard or bundles thereof, embodying the claims or inventions set forth and claimed in said patents or said applications, or shall grant any right under any such license, upon terms more favorable than those granted hereunder to this Licensee, then it will grant to this Licensee a license on the same terms or extend to it the same right granted to any such other person. This paragraph shall not apply to any license granted on or prior to the effective date hereof, nor shall the same apply to the terms of settlement of any claim of Licensor or provisions with respect to the payment thereof, contained in any such license.

16. The terms "gypsum plasterboard," "gypsum
9350 wallboard" and "plasterboard" shall be understood to mean all board made of gypsum, by whatever name called, having the characteristics of gypsum plasterboard or gypsum wallboard, irrespective of the purpose for which the same may be sold or used, and shall include gypsum laths and all other gypsum boards.

17. If at any time after the expiration of two (2) years from January 1, 1930, or such earlier date that Licensee shall make its plant ready to practice the process set forth and claimed in said Roos and Bayer applications in the manufacture of gypsum wallboard or plasterboard, there shall have been invented or come into use any process which shall make the said process of forming a cellular product as set forth and claimed in said Roos and Baver applications obsolete or shall displace the same, and the Licensor shall in its own manufacture permanently and wholly abandon the use of the subject-matter of the claims of said Roos

and Bayer applications, it shall notify Licensee in writing thereof, and Licensee may then, upon thirty (30) days' written notice to Licensor, cancel and terminate this license in so far as the same applies to said Roos and Bayer applications or to the patent or patents granted or issued therefor or thereupon, and from the date of such cancellation the royalties or license fees to be paid by Licensee hereunder shall be reduced by one per cent (1%) of its said selling price; Provided, However, that if Licensor shall not in such event permanently and wholly abandon the use of said process but shall only partially abandon the same, then to the extent or degree and for the term that Licensor shall abandon the same in its own manufacture Licensee shall be relieved from the payment of license fees or royalties to the same extent, that is to say, if Licensor shall in such event manufacture and sell any board the core of which is made of gypsum of
9351 a particular size, kind or make, or for a particular purpose or use, without the use of said process embodied therein, then if Licensee shall manufacture and sell the same board of the same particular size, kind or make and for the same purpose or use, without the use of said process embodied therein, then Licensee shall not be required to pay royalties or license fees upon such particular board for the term that Licensor shall manufacture and sell the same. "License fees" and "royalties" for the purpose of this paragraph shall mean one per cent (1%) of said selling price. The use by Licensor of any improvement which Licensee has the right to use as set forth in paragraph 18 hereof, or the manufacture of plasterboard or gypsum wallboard without the use of said process for sale only in foreign countries where Licensor has no patented rights in said process, shall not constitute an abandonment of said process or a partial abandonment thereof within the meaning of this paragraph.

18. If Licensor shall at any time during the existence of this agreement make or obtain any improvement for the formation of the bubble described in the process set forth in said Roos and Bayer applications and/or method of its introduction in the core of plasterboard or gypsum wallboard, and which improvement is covered by the claims of said Roos and Bayer applications, and shall itself use the same in its own manufacture, then so long as Licensee shall continue to pay the license fees or royalties herein-

before stipulated the right, license or privilege herein contained shall be extended to and include the use of said improvement in the manufacture by Licensee of gypsum plasterboard or gypsum wallboard, subject to all of the terms and conditions herein contained, except only that Licensee shall not be required to pay any additional sum, royalty or license fee therefor. It is further under-
9352 stood that if a patent or patents shall be granted or issued for or upon said improvement, then all of the provisions of this agreement, as well as the provision of paragraph 2 hereof reserving the right in Licensor to determine and fix at any time and to change from time to time the minimum price or prices at which Licensee shall sell any gypsum plasterboard or gypsum wallboard manufactured by Licensee and embodying the claims of said patents, shall apply to the improvement set forth and claimed in any patent or patents granted or issued for or upon said improvement. Licensor will promptly notify Licensee of the general adoption by it of any such improvement in its own manufacture, together with such information as it may possess as to the use thereof in the manufacture of plasterboard and gypsum wallboard.

19. Licensee has investigated and fully satisfied itself with respect to the inventions and improvements set forth in said patents and applications for letters patent and the use thereof in its own manufacture, and has executed this agreement without relying upon any representations which may have been made by Licensor with respect thereto. No representations have been made by Licensor not expressly stated in this contract which Licensee shall at any time have any right to rely upon as an inducement for its making this contract or for any result or results to be obtained by Licensee in its own plant by its use of the inventions and improvements set forth and claimed in any of said patents or applications for letters patent.

20. The Licensor agrees at any time during the term hereof to extend to Licensee, upon its written request, an indivisible and non-exclusive license or privilege to use the said process or processes set forth and claimed in said Roos or Bayer applications in the manufacture in its said plants of any other gypsum product not specifically covered by this agreement and in which Li-
9353 censor shall use the same in its own manufacture and to sell the same, upon the payment to Licensor of

one per cent (1%) of the selling price of Licensee of all of said other gypsum product, whether or not embodying the said process in making the same, manufactured and sold by Licensee and upon the same terms as set forth herein and subject to all of the conditions hereof, in which event in the agreement for the same there shall be substituted for the words "plasterboard and/or gypsum wallboard" the name of such other product or products. An agreement containing all of said terms and conditions shall be reduced to writing and signed by both parties before the same shall become effective.

21. From the date this contract shall become effective the same shall supersede all prior license agreements at any time made between the parties hereto relating to the subject-matter hereof or relating to any of the patents or applications for letters patent referred to in this agreement; Provided, However, that Licensor shall not be barred or prevented from recovering any claim which may have accrued under any such prior license agreements prior to the time this contract shall become effective, including all payments, royalties or license fees agreed to be paid thereunder by Licensee up to the date this agreement shall go into effect.

22. This license and all of the covenants and agreements hereof shall become effective upon the date Licensor shall receive a conveyance and assignment of said Haggerty and Hite patents to it, pursuant to authority granted by the United States District Court to the receivers of the Universal Gypsum & Lime Co., a Delaware corporation, and to said company, to sell and assign said Haggerty and Hite patents to Licensor, and from the effective date thereof this license and all of the covenants and agreements hereof shall be binding upon and inure to the benefit
9354 of the successors and assigns of the parties hereto, but nothing in this paragraph shall be construed to permit an assignment hereof by Licensee, except as hereinabove specifically provided.

In witness whereof, the parties hereto have caused these presents to be signed by their respective presidents, attested by their respective secretaries and their corporate seals to be hereunto affixed in duplicate the day and year first above written.

UNITED STATES GYPSUM COMPANY,

By S. L. AVERY,

Its President.

ATTEST:

R. G. BEAR,

Secretary.

ATLANTIC GYPSUM PRODUCTS COMPANY,

By WILLARD P. FULLER,

Its Treasurer.

ATTEST:

HUGH CHANNING,

Secretary.

9355 EXHIBIT "A"

Utzman patent No. 1,330,413. Application filed September 3, 1918, granted February 10, 1920, expires February 10, 1937.

Birdsey patent No. 1,358,508. Application filed January 2, 1920, granted November 9, 1920, expires November 9, 1937.

Utzman patent No. 1,383,249. Application filed August 13, 1918, granted June 28, 1921, expires June 28, 1938.

Birdsey patent No. 1,383,254. Application filed July 29, 1918, granted June 28, 1921, expires June 28, 1938.

Birdsey patent No. 1,383,255. Application filed January 2, 1920, granted June 28, 1921, expires June 28, 1938.

Birdsey patent No. 1,384,298. Application filed August 19, 1920, granted July 12, 1921, expires July 12, 1938.

Birdsey patent No. 1,395,031. Application filed January 2, 1920, granted October 25, 1921, expires October 25, 1938.

Birdsey patent No. 1,395,032. Application filed January 2, 1920, granted October 25, 1921, expires October 25, 1938.

Birdsey patent No. 1,406,967. Application filed January 3, 1921, granted February 21, 1922, expires February 21, 1939.

Birdsey patent No. 1,427,939. Application filed January 3, 1921, granted September 5, 1922, expires September 5, 1939.

Birdsey patent No. 1,428,624. Application filed January 2, 1920, granted September 12, 1922, expires September 12, 1939.

Brookby patent No. 1,489,693. Application filed September 25, 1922, granted April 8, 1924, expires April 8, 1941.

Birdsey patent No. 1,514,827. Application filed October 6, 1921, granted November 11, 1924, expires November 11, 1941.

Birdsey patent No. 1,515,380. Original application filed January 2, 1920, granted November 11, 1924, expires November 11, 1941.

9356 Birdsey patent No. 1,518,243. Application filed September 22, 1922, granted December 9, 1924, expires December 9, 1941.

Birdsey patent No. 1,525,715. Application filed January 2, 1920, granted February 10, 1925, expires February 10, 1942.

Birdsey patent No. 1,526,307. Application filed October 10, 1921, granted February 10, 1925, expires February 10, 1942.

Utzman patent No. 1,540,045. Application filed March 14, 1923, granted June 2, 1925, expires June 2, 1942.

Birdsey patent No. 1,558,459. Application filed October 4, 1922, granted October 27, 1925, expires October 27, 1942.

Birdsey patent No. 1,561,635. Application filed January 3, 1921, granted November 17, 1925, expires November 17, 1942.

Armstrong patent No. 1,278,821. Application filed January 4, 1918, granted September 17, 1918, expires September 17, 1935.

Armstrong patent No. 1,348,387. Application filed March 15, 1919, granted August 3, 1920, expires August 3, 1937; application for reissue filed June 3, 1922, Serial No. 565,737, reissued January 24, 1928 as Reissue patent No. 16,860.

Armstrong patent No. 1,367,292. Application filed July 12, 1919, granted February 1, 1921, expires February 1,

1938; application for reissue filed June 9, 1922, Serial No. 567,205, reissued May 22, 1928 as Reissue Patent No. 16,969.

Utzman patent No. 1,455,127. Application filed June 14, 1922, granted May 15, 1923, expires May 15, 1940.

Utzman patent No. 1,492,588. Application filed June 14, 1922, granted May 6, 1924, expires May 6, 1941.

Williams patent No. 1,519,180. Application filed August 18, 1922, granted December 16, 1924, expires December 16, 1941.

Armstrong patent No. 1,556,575. Application filed October 1, 1921, granted October 13, 1925, expires October 13, 1942.

Armstrong patent No. 1,399,455. Application filed February 24, 1920, granted December 6, 1921, expires December 6, 1938.

9357 Tyler patent No. 1,417,117. Application filed November 15, 1919, granted May 23, 1922, expires May 23, 1939.

Birdsey patent No. 1,643,801. Application Serial No. 437,062, filed January 13, 1921, granted September 27, 1927, expires September 27, 1944.

Birdsey patent No. 1,650,930. Application Serial No. 506,676, filed October 10, 1921, granted November 29, 1927, expires November 29, 1944.

Birdsey patent No. 1,676,318. Application Serial No. 545,231, filed March 20, 1922, granted July 10, 1928, expires July 10, 1945.

Birdsey patent No. 1,710,915. Application Serial No. 555,627, filed April 19, 1922, granted April 30, 1929, expires April 30, 1946.

Smith patent No. 1,603,158. Application Serial No. 662,359, filed September 12, 1923, granted October 12, 1926, expires October 12, 1943.

Birdsey patent No. 1,666,161. Application Serial No. 737,237, filed September 12, 1924, granted April 17, 1928, expires April 17, 1945.

Utzman patent No. 1,631,108. Application Serial No. 750,224, filed November 17, 1924, granted May 31, 1927, expires May 31, 1944.

Brookby & Absmeier patent No. 1,689,322. Application Serial No. 91,297, filed March 1, 1926, granted October 30, 1928, expires Oct. 30, 1945.

Armstrong patent No. 1,701,291. Application Serial No. 310,470, filed July 12, 1919, granted February 5, 1929, expires February 5, 1946.

Utzman patent No. 1,638,280. Application Serial No. 374,833, filed April 19, 1920, granted August 9, 1927, expires August 9, 1944.

Armstrong patent No. 1,641,611. Application Serial No. 377,421, filed April 29, 1920, granted September 6, 1927, expires September 6, 1944.

Speer patent No. 1,686,671. Application Serial No. 427,044, filed November 29, 1920, granted October 9, 1928, expires October 9, 1945.

Speer patent No. 1,641,648. Application Serial No. 427,045, filed November 29, 1920, granted September 6, 1927, expires September 6, 1944.

Mehlhope patent No. 1,604,707. Application Serial No. 473,288, filed May 28, 1921, granted October 26, 1926, expires October 26, 1943.

9358 Gustafson patent No. 1,665,168. Application Serial No. 509,366, filed December 2, 1919, renewed October 21, 1921, granted April 3, 1928, expires April 3, 1945.

Kohler, et al. patent No. 1,673,944. Application Serial No. 640,412, filed March 2, 1922, granted June 19, 1928, expires June 19, 1945.

Utzman patent No. 1,703,183. Application Serial No. 581,362, filed August 12, 1922, granted February 26, 1929, expires February 26, 1946.

Birdsey Patent No. 1,718,890. Application Serial No. 583,795, filed August 23, 1922, granted June 25, 1929, expires June 25, 1946.

Utzman application Serial No. 477,371, filed June 14, 1921, finally allowed April 26, 1929. Patent No. 1,731,116 will issue October 8, 1929.

Knode application Serial No. 590,358. Filed September 25, 1922.

Utzman application Serial No. 581,361. Filed August 12, 1922.

Williams application Serial No. 582,606. Filed August 18, 1922.

*Roos application Serial No. 733,197, filed August 20, 1924.

Bayer application Serial No. 661,723, filed September 8, 1923.

*Roos application Serial No. 3477, filed January 19, 1925.

Roos application Serial No. 142,155, filed October 16, 1926.

Haggerty patent No. 1,500,452. Application Serial No. 565,433, filed June 2, 1922, granted July 8, 1924.

Hite patent No. 1,230,397. Application Serial No. 115,649, filed August 18, 1916, granted June 19, 1917.

9359 November 5, 1929.

ATLANTIC GYPSUM PRODUCTS COMPANY,
40 Central Street,
Boston, Massachusetts.

Attention: Mr. Willard P. Fuller

DEAR SIRS: This is to advise you that the Federal Courts in the Universal Gypsum & Lime Co. receiverships entered orders approving the contract with United States Gypsum Company. We have this day received the conveyance and assignment of the Haggerty and Hite patents to us pursuant to authority granted by the United States District Court for the Northern District of Illinois, Eastern Division, and the other Federal District Courts in which receivership proceedings are pending, to the receivers of the Universal Gypsum & Lime Co. and said Company to sell and assign said Haggerty and Hite patents to us. Your license agreement dated October 21, 1929, therefore becomes effective on this date. In the future all royalties for our patents will be collected in accordance with the terms of the license agreement of October 21, 1929.

Yours very truly,

UNITED STATES GYPSUM COMPANY,

——— ———, *Secretary.*

*. Both are prior applications to Roos patent #2,079,565 issued May 4, 1937 on application #35527 filed 6-8-1925 and renewed 2-18-1931.

9360 ATLANTIC GYPSUM PRODUCTS COMPANY
40 Central Street
BOSTON, U. S. A.

NOVEMBER 9, 1929.

UNITED STATES GYPSUM COMPANY,
300 West Adams Street,
Chicago, Illinois.

Attention: Mr. R. G. Bear, Secretary.

GENTLEMEN: We wish to acknowledge receipt of your letter of November 5, advising us that the Federal Courts in the Universal Gypsum & Lime Cco. receiverships entered orders approving the contract with United States Gypsum Company and that having received the conveyance and assignment of the Haggerty and Hite patents, you have notified us that our license agreement, dated October 21, 1929, therefore becomes effective as of November 5, 1929.

We will compute all royalties under our license agreement in accordance with the terms of this agreement.

Very truly yours,

ATLANTIC GYPSUM PRODUCTS COMPANY,

By WILLARD P. FULLER,

Treasurer.

WPF:A

9361 *Government's Exhibit No. 8*

LICENSE AGREEMENT

This agreement made this 10th day of February, at 12:00 P. N. A. D. 1937, by and between the United States Gypsum Company, an Illinois corporation, of Chicago, Illinois, hereinafter referred to as "Licensor", and S. M. Gloyd of Oklahoma City, Oklahoma, doing business as and in the name of Texas Cement Plaster Co., hereinafter referred to as "Licensee"; witnesseth, that

Whereas, Licensor is the owner of certain letters patent and applications for letters patent of the United States covering an improved gypsum wallboard and method or process of making the same, together with machines and appliances for the manufacture of such inventions which,

with certain other patents, are more specifically set forth in Exhibit A attached hereto and made a part hereof; and

Whereas, gypsum wallboard or plasterboard manufactured by Licensee is made by the use of the machines or according to the processes or embodying the claims of some or all of said patents and applications for letters patent set forth in said Exhibit A, and Licensee desires to obtain a license from Licensor to make, use and sell the inventions and improvements set forth and claimed in all of said patents and applications for letters patent set forth in said Exhibit A throughout the full term thereof; and

Whereas, Licensor has agreed to grant said license upon the terms and conditions hereinafter stated;

Now, therefore, in consideration of the sum of One Dollar and other good and valuable considerations, the receipt whereof is hereby acknowledged from each party to the other party, and in consideration of the mutual covenants and agreements hereinafter contained, the parties
9362 hereto do hereby agree as follows, to-wit:

1. Licensor agrees promptly to disclose to Licensee all information and formulae which it now has or may obtain relating to the process of making a cellular product through the formation of a tenacious foam and mixing the foam with a cementitious material, as set forth and claimed in Roos Letters Patent No. 2,017,022, in so far as the same is or may be applied to gypsum, and including all information and formulae for the manufacture of gypsum plasterboard and gypsum wallboard embodying the inventions and improvements set forth and claimed in said Roos patent together with a description of the machines or appliances which it now has for making the same. It will assist Licensee to make its plant ready for practicing said process in the manufacture of plasterboard and gypsum wallboard by furnishing without cost to Licensee the advice and instruction of Licensor's experts and information with respect to the purchase and cost of said machines and appliances.

2. Licensor has agreed to and does hereby give and grant unto Licensee an indivisible and non-exclusive right, license and privilege of using the process or processes and making and using the machines and/or inventions set forth and claimed in any and all of said patents and/or applications for letters patent set forth in Exhibit A attached

hereto in the manufacture of gypsum plasterboard and/or gypsum wallboard at the plants or factories now owned and/or operated by Licensee, or at any other plant or factory hereafter owned and/or operated or controlled by Licensee, and of manufacturing at any such place or places, selling and using in the United States of America and the territories and possessions thereof gypsum plasterboard or gypsum wallboard manufactured at any such
9363 place or places and embodying the inventions and improvements set forth and claimed in said patents and/or applications for letters patent described in said Exhibit A, for the full term of said letters patent or of any letters patent which may be granted for or upon any of said applications, including any extensions and/or reissues thereof.

It is expressly understood and agreed that the indivisible and non-exclusive right, license and privilege aforesaid is granted upon condition that Licensor shall have and it hereby reserves the right to determine and fix at any time and to change from time to time during the existence of said patents or patents which may be issued upon any of said applications and so long as said license shall continue, the minimum price or prices at which Licensee shall sell any plasterboard or gypsum wallboard manufactured by Licensee by use of any of the machines or appliances covered by any of said letters patent or letters patent which may be issued upon any of said applications and which shall embody the inventions and improvements set forth and claimed in any of said patents or letters patent which may be issued upon any of said applications, and in case Licensor shall exercise the right so reserved, it shall first serve written notice of its intention so to do upon Licensee, accompanied by a statement of the minimum price or prices at which Licensee shall sell said gypsum plasterboard or gypsum wallboard, and thereafter shall give to Licensee written or telegraphic notice of any change in such price or prices, and Licensee expressly covenants and agrees that Licensee will not, so long as this agreement shall continue in force and effect and after receipt of such notice given in accordance with the terms and conditions hereof, directly or indirectly, sell or offer for sale any gypsum plasterboard or gypsum wallboard manufactured by Licensee by use of any of the machines or appliances covered by any of said patents or patents which may
9364 be issued upon any of said applications and which shall embody the inventions and improvements set

forth and claimed in any of said patents or patents which may be issued upon any of said applications, at a price or prices less than that stated by Licensor in said notice or in any such written or telegraphic notice of a change in such price or prices.

Said minimum price shall not be more than that price at which Licensor determines to sell plasterboard or gypsum wallboard embodying the inventions and improvements set forth and claimed in said patents to its own like trade in the same market.

3. Licensee agrees to pay to Licensor for said disclosures, information and assistance, the agreements of Licensor herein contained, and for the right, license and privilege of using the processes and making and using the machines and/or inventions in the manufacture of plasterboard and gypsum wallboard covered by said patents and applications for letters patent described in said Exhibit A, and for the privilege of manufacturing, using and/or selling plasterboard and gypsum wallboard embodying the inventions and improvements set forth and claimed in said patents and applications for letters patent, an amount (hereinafter for convenience referred to as a license fee or royalty) equivalent to two per cent (2%) of the selling price of Licensee of all plasterboard and gypsum wallboard of every kind, whether or not made by the use of said machines and/or embodying the inventions and improvements set forth and claimed in said letters patent or applications for letters patent, manufactured and sold by Licensee between the date hereof and July 8, 1941, the date of the expiration of patent number 1,500,452 mentioned in said Exhibit A, and thereafter an amount equivalent to one per cent (1%) of the selling price of Licensee of all such plasterboard and gypsum wallboard manufactured and sold by Licensee between July 8, 1941,
9365. and the date of the last to expire of said Roos patent number 2,017,022 and any patent or patents which may be issued upon said Roos applications mentioned in said Exhibit A. The amount of one per cent (1%) of said selling price included in said royalties or license fees is the amount agreed to be paid by Licensee for the use of said Haggerty patent.

Licensee's selling price shall mean the delivered selling price of Licensee, less freight paid by the customer and less regular cash discounts allowed by Licensee.

4. It is further agreed that so long as the license provided for in paragraph 2 hereof shall remain in force between the parties hereto, or in case the license granted under paragraph 2 hereof shall expire before the expiration of the patents specifically described in this paragraph, and the said license granted under paragraph 2 shall continue in force between the parties hereto for the full term of the last to expire of any of said patents described in said Exhibit A, or of any patent or patents granted for or upon any application described in said Exhibit A, then until the expiration of the patents specifically described in this paragraph, Licensor does hereby give and grant unto the Licensee an indivisible and non-exclusive right, license and privilege of making and using the inventions set forth and claimed in those certain patents known as the Birdsey Plasterboard Bundle Patent number 1,696,877, dated December 25, 1928, Utzman Patent number 1,724,740, dated August 13, 1929, Birdsey Patent number 1,730,113, dated October 1, 1929, and Birdsey Patent number 1,946,056, dated February 6, 1934, including any extensions and/or reissues thereof, at the plants or factories now owned or operated by Licensee or at any other plant or factory hereafter owned and/or operated and controlled by Licensee, and of selling or using
9366 bundles of plasterboard and/or gypsum wallboard put up or bundled by Licensee at any such place or places according to the claims set forth and claimed in the said patents and applications for letters patent in this paragraph described, upon the terms and conditions hereinafter stated.

Licensee agrees to pay to Licensor for the right, license and privilege of making, using or selling the inventions set forth and claimed in said patents and applications in the next preceding paragraph described, in addition to the sums hereinabove set forth an amount (hereinafter referred to as a license fee or royalty) equivalent to ten cents (10¢) per one thousand (1,000) square feet of plasterboard and/or gypsum wallboard which is sold by Licensee in bundles of any kind, whether or not the bundles shall be made according to the claims set forth and claimed in said patents, which said license fee or royalty shall be payable at the times and in accordance with the terms of paragraph 6 hereof. The term "bundle" shall not include unbundled material wired or strapped for purpose of transportation or unbundled material shipped for export or coastwise trade in fiber, wooden or other crates.

5. It is express understood and agreed that the license herein granted shall be personal to the Licensee, and that the same or any right therein or thereunder shall not be sold or assigned or transferred without the written consent of Licensor, or transferred by operation of law; provided, however, that the same may be assigned by Licensee to any company acquiring all of Licensee's plasterboard and wallboard assets and business, on condition that Licensee shall first obtain an agreement in writing from any such assignee agreeing to assume all of the obligations of Licensee under this agreement and to be bound by all of the terms and conditions hereof and shall deliver such agreement to Licensor. Licensee agrees not to sell, 9367 transfer or convey all of Licensee's plasterboard and/or wallboard business, or the assets used in connection therewith, without requiring the purchaser or purchasers thereof to assume, in writing, all of the obligations of Licensee hereunder, and to agree to be bound by all of the terms and conditions of this contract, and deliver such agreement to Licensor.

6. Licensee agrees to keep separate, full and accurate books of account and records showing the exact quantity of all plasterboard and gypsum wallboard manufactured and sold by Licensee, as well as a separate record of all plasterboard and/or gypsum wallboard sold by Licensee in bundles, and agrees that on or before the twentieth day of each calendar month Licensee will render unto Licensor true written returns verified under oath by an officer or other agent of Licensee, setting forth the quantity of all plasterboard and/or gypsum wallboard manufactured and sold by Licensee during the preceding calendar month and the quantity thereof put up and sold by Licensee in bundles, together with the price or prices at which the same was sold and is to be accounted for hereunder, such written returns to be delivered to Licensor at its office in Chicago, Illinois; and Licensee agrees to pay to Licensor on or before the 20th day of each calendar month at the office of Licensor at Chicago, Illinois, the hereinbefore stipulated royalties or license fees which may then be due under this agreement on account of all said plasterboard and/or gypsum wallboard manufactured and sold by Licensee and put up and sold by Licensee in bundles during the next preceding calendar month.

7. Licensor, or its duly authorized representative, shall have the right at all reasonable times during business

hours, to inspect the books of account and records
9368 of Licensee referred to in the next preceding paragraph hereof, including all records of every kind showing the quantity of said plasterboard and gypsum wallboard manufactured and sold by Licensee and the quantity thereof put up and sold by Licensee in bundles and the price or prices at which the same was sold, and to make copies thereof and memoranda therefrom; provided, however, that if at the time of any such examination Licensee shall request it in writing, then such examination shall be made by a certified public account agreed upon between the parties hereto, in which event the expense thereof shall be borne equally by both parties. If the parties at any such time shall not agree upon the certified public accountant to make such examination, then Licensor shall name three certified public accounts of good standing not directly or indirectly employed by it or in any other way connected with it, and if Licensee shall not accept any one of them, then Licensor shall have the right to make such examination itself.

8. Licensee agrees that all plasterboard or gypsum wallboard manufactured and sold by Licensee embodying the claims of any of said patents and/or applications for letters patent or patents which may be issued thereupon, shall be distinctly marked with the word "Patented" and/or "Patent applied for," as the case may be, together with the numbers of any of said patents or applications specified by Licensor, the claims of which may be embodied in said plasterboard or gypsum wallboard, and in connection with said marking Licensee will further mark said board with the words "Licensed under the above letters patent" and/or "Licensed under pending applications for letters patent" as the case may be, which marking shall be plainly visible. Licensee further agrees that all bundles put
up and sold by Licensee embodying the claims of any
9369 of said patents numbers 1,696,877, 1,724,740, 1,730,113 and 1,946,056 shall be similarly marked together with the numbers of said bundle patents.

9. Having regard for the fact that there are or may be certain manufacturers of plaster or gypsum products, jobbers or other wholesale distributors of such products, who do not or may not manufacture gypsum wallboard or plasterboard but who desire or may desire to have gypsum wallboard or plasterboard manufactured for them, it is

understood and agreed that Licensee may manufacture for jobbers (being those who do not manufacture but buy and sell plasterboard or gypsum wallboard in straight cars or in mixed cars with other building material and who do not sell at retail), at the prices so fixed by Licensor as aforesaid, gypsum wallboard or plasterboard embodying the inventions and improvements set forth and claimed in said letters patent, and may, with the written consent of Licensor, manufacture for any such other manufacturer or other wholesale distributor, gypsum wallboard or plasterboard embodying the said inventions and improvements; provided, however, that the said license fee or royalty to be paid to Licensor as hereinbefore provided shall be based upon all gypsum wallboard and plasterboard manufactured for and sold and invoiced to such other manufacturer, jobber or wholesale distributor and upon the regular selling price of Licensee of such plasterboard or gypsum wallboard to its regular dealer trade at the time of such sale and invoice, and shall not be based upon the price at which plasterboard or gypsum wallboard is sold and invoiced by Licensee to such other manufacturer, jobber or wholesale distributor. Nothing hereinbefore contained in this agreement shall be construed to give Licensee the right to manufacture gypsum plasterboard or gypsum wallboard embodying the inventions and improvements set forth and claimed in any of said
9370 letters patent or in any letters patent after the same shall have been granted for or upon any of said applications for said other manufacturers or wholesale distributors and to sell the same, without the written consent of Licensor.

10. Licensee covenants and agrees that all of said gypsum plasterboard and gypsum wallboard manufactured and sold by Licensee embodying the inventions and improvements set forth and claimed in any of said letters patent or patents issued upon any of said applications and commonly known in the trade as "seconds" shall be plainly invoiced as "seconds" and shall be plainly marked with a visible red stamp or label firmly fixed on each of said boards showing the word "seconds" in letters at least three inches in height.

11. As one of the considerations for the indivisible and non-exclusive license herein and hereby granted, Licensee hereby acknowledges the validity of said letters patent or of any letters patent which may be granted or issued for

or upon said applications, forming the subject-matter of said license so long as said license shall remain in full force and effect, and agrees that Licensee will not at any time during the existence of said license, directly or indirectly, by himself, through or together with another or others, contest the validity of either or any of said letters patent or the title thereto of Licensor.

12. In the event that either party shall at any time neglect, fail or refuse to keep or perform any of the conditions or agreements herein to be kept by it and performed, then the other party, at its election, may serve upon the party in default written notice of intention to terminate this license, which notice shall specify the alleged neglect, failure or refusal, and if within thirty
9371 (30) days from the date of delivery of said notice the party in default shall not cure the default specified in said notice, then the other party may cancel and terminate this agreement by notifying the party in default in writing of its election so to do, without the necessity of any court action; provided, however, that neither party shall be relieved thereby from any liability accrued at the time of such termination; and provided further, that if the party upon whom said notice is served shall deny that it is in default in whole or in part, as specified therein, then the party serving such notice shall not be privileged to cancel this contract on account of the alleged default specified therein, provided the party upon whom said notice shall have been served shall within said thirty (30) day period perform the agreements and submit the question to arbitration, as in this paragraph hereinafter set forth. In case of any such denial the party upon whom the notice shall have been served shall within said thirty (30) day period state in writing to the other party wherein and in what respect it denies the default specified in said notice and shall at the same time make good any default specified therein which it does not deny and appoint in writing one person as arbiter to arbitrate the question of whether or not it is in default in respect to that which it shall have denied as aforesaid, it being understood, however, that if the question shall be with respect to the amount of royalties or license fees to be paid hereunder, then the Licensee shall first pay or offer to pay the amount of such license fees or royalties which it then admits is due and payable in accordance with the terms hereof, and the acceptance thereof by the Licensor shall not operate

as a waiver of any of its rights hereunder or of any claim it may have made in any notice served by it upon Licensee. The party so serving said notice shall, after the other party shall have made good any default specified
9372 in said notice which it did not deny in writing as aforesaid, including the payment of royalties or license fees, if any, admitted by it to be due and payable hereunder, and within ten (10) days from the date of the appointment of said first arbiter in accordance with the terms hereof, appoint in writing another person as arbiter, and the two persons so appointed shall within ten (10) days or as soon as possible thereafter, appoint in writing a third person as arbiter. The three persons so appointed shall, within thirty (30) days from the date of the appointment of said last mentioned arbiter, or as soon as possible thereafter, decide whether or not the party upon whom said notice has been served is in default hereunder with respect to anything contained in said notice. The decision of a majority of the three arbiters so appointed shall constitute a final settlement of the said question and be binding and conclusive upon both the Licensor and the Licensee, and if it shall have been determined by a majority of the said arbiters that the party upon whom said notice was served is in default with respect to anything contained in said notice and the party so found to have been in default shall fail or refuse to comply with the terms of the award or finding made by said arbiters within thirty (30) days from the date such award or finding shall have been made, the party serving said notice may at its election terminate and cancel this agreement in writing. In the event of default hereunder by either party and notice of such default is served by the other party as herein provided, and after service of such notice the party in default shall cure the same as hereinbefore provided the same shall constitute a nullification of said notice to the same effect as if said notice had not been served.

In case at any time the Licensee shall be adjudged
9373 a bankrupt, then the license hereunder shall immediately be and become canceled and terminated, but the Licensor shall not thereby be prevented from collecting all license fees or royalties accrued hereunder at the time of such termination. The waiver of any breach by either party shall not be interpreted as constituting a waiver of any further breach or breaches. Either party may proceed by action to specifically enforce this contract or

any of the terms, conditions and covenants thereof by injunction or in such other manner as may be provided by law.

13. Any notice to be given under the terms hereof may be served by the Licensor or the Licensee by mailing the same to the other party hereto, postage prepaid and registered, addressed to any of its officers at its last known principal office, and the deposit of any such notice in the United States mails, postage prepaid and so addressed, shall constitute service of notice hereunder. Any telegraphic notice given under paragraph 2 hereof shall be confirmed in writing in the ordinary course of business.

14. It is understood and agreed that if at any time during the term hereof the Licensee shall, in the judgment of the Licensor, suffer substantial detriment by reason of any infringement on the part of any person or persons of any of said letters patent or of any patent that may be granted upon said applications, under which this license is granted, the Licensor will afford the Licensee such reasonable protection as in the judgment of the Licensor shall be necessary or proper.

If a court of last resort upon final appeal or review shall decree invalid all the claims of said Roos patent No. 2,017,022 and patents issued upon said Roos applications, or Licensee shall be permanently enjoined from 9374 manufacturing plasterboard and gypsum wallboard, the body or core of which is made according to the process set forth and claimed in said Roos patents in such manner that they cannot practice in any way any of the inventions set forth in the said Roos patents, and such injunction shall be made final by a court of last resort upon final appeal or review, then from the time the court of last resort upon final appeal or review shall decree that all the claims of said Roos patents are invalid, or make such injunction permanent and final, the license fees or royalties to be paid by Licensee hereunder shall be reduced by one per cent (1%) of said selling price, or if a court of last resort upon final appeal or review shall decree that all the claims of said Haggerty patent are invalid or Licensee shall be permanently enjoined from manufacturing plasterboard and gypsum wallboard embodying the inventions and improvements set forth and claimed in said Haggerty patent in such manner that they cannot practice in any way any of the inventions set forth

in said patents, and such injunction shall be made final by a court of last resort upon final appeal or review, then from the time the court of last resort upon final appeal or review shall decree all claims of said Haggerty patent invalid or make said injunction permanent and final, the said license fees or royalties agreed to be paid by Licensee for said Haggerty patent shall cease and determine. If, in accordance with the provisions of this paragraph, the royalties for said Roos patents and said Haggerty patent shall be reduced so that no further license fees or royalties are payable under paragraph 3 hereof, then this license agreement shall thereupon become canceled and terminated.

15. In case Licensor shall, subsequent to the date hereof, grant to any other person any license under said patents or applications for letters patent set forth in
9375 said Exhibit A and paragraph 4 hereof for the manufacture, sale or use of gypsum plasterboard or gypsum wallboard or bundles thereof, embodying the claims or inventions set forth and claimed in said patents or said applications, or shall grant any right under any such license, upon terms more favorable than those granted hereunder to this Licensee, then it will grant to this Licensee a license on the same terms or extend to it the same right granted to any such other person. This paragraph shall not apply to any license granted on or prior to the effective date hereof, nor shall the same apply to the terms of settlement of any claim of Licensor or provisions with respect to the payment thereof, contained in any such license.

16. The terms "gypsum plasterboard," "gypsum wallboard" and "plasterboard" shall be understood to mean all board made of gypsum, by whatever name called, having the characteristics of gypsum plasterboard or gypsum wallboard, irrespective of the purpose for which the same may be sold or used, and shall include gypsum laths and all other gypsum boards.

17. If Licensor shall at any time during the existence of this agreement make or obtain any improvement for the formation of the bubble described in the process set forth in said Roos Patent No. 2,017,022 or method of its introduction in the core of plasterboard or gypsum wallboard, and which improvement is covered by the claims of said Roos patent, and shall itself use the same in its own manufac-

ture, then so long as Licensee shall continue to pay the license fees or royalties hereinbefore stipulated the right, license or privilege herein contained shall be extended to and include the use of said improvement in the manufacture by Licensee of gypsum plasterboard or gypsum wallboard, subject to all of the terms and conditions
9376 herein contained, except only that Licensee shall not be required to pay any additional sum, royalty or license fee therefor. It is further understood that if a patent or patents shall be granted or issued for or upon said improvement, then all of the provisions of this agreement, as well as the provision of paragraph 2 hereof reserving the right in Licensor to determine and fix at any time and to change from time to time the minimum price or prices at which Licensee shall sell any gypsum plasterboard or gypsum wallboard manufactured by Licensee and embodying the claims of said patents, shall apply to the improvement set forth and claimed in any patent or patents granted or issued for or upon said improvement. Licensor will promptly notify Licensee of the general adoption by it of any such improvement in its own manufacture, together with such information as it may possess as to the use thereof in the manufacture of plasterboard and gypsum wallboard.

18. Licensee has investigated and fully satisfied himself with respect to the inventions and improvements set forth in said patents and applications for letters patent and the use thereof in his own manufacture, and has executed this agreement without relying upon any representations which may have been made by Licensor with respect thereto. No representations have been made by Licensor not expressly stated in this contract which Licensee shall at any time have any right to rely upon as an inducement for his making this contract or for any result or results to be obtained by Licensee in his own plant by his use of the inventions and improvements set forth and claimed in any of said patents or applications for letters patent.

9377 19. The Licensor agrees at any time during the term hereof to extend to Licensee, upon his written request, an indivisible and non-exclusive license or privilege to use the said process or processes set forth and claimed in said Roos Patent No. 2,017,022 in the manufacture in his said plants of any other gypsum product not specifical-

ly covered by this agreement and in which Licensor shall use the same in its own manufacture and to sell the same, upon the payment to Licensor of one per cent (1%) of the selling price of Licensee of all of said other gypsum product, whether or not embodying the said process in making the same, manufactured and sold by Licensee and upon the same terms as set forth herein and subject to all of the conditions hereof, in which event in the agreement for the same there shall be substituted for the words "plasterboard and/or gypsum wallboard" the name of such other product or products. An agreement containing all of said terms and conditions shall be reduced to writing and signed by both parties before the same shall become effective.

20. From the date this contract shall become effective the same shall supersede all prior license agreements at any time made between the parties hereto relating to the subject matter hereof or relating to any of the patents or applications for letters patent referred to in this agreement.

21. This license and all of the covenants and agreements hereof shall be binding upon and inure to the benefit of the successors and assigns of the Licensor, and the heirs, administrators, executors and assigns of the Licensee, but nothing in this paragraph shall be con-
9378 strued to permit an assignment hereof by Licensee, except as hereinabove specifically provided.

In witness whereof the Licensor has caused these presents to be signed by its president, attested by its secretary, and its corporate seal hereunto affixed, and the Licensee has signed and sealed these presents, all the day and year first above written.

UNITED STATES GYPSUM COMPANY,

[SEAL] By O. M. KNODE, *President.*

ATTEST

C. H. HAVER, *Secretary.*

[SEAL]

S. M. GLOYD,
doing business as and in the name of
TEXAS CEMENT PLASTER CO.

WITNESS:

9379 EXHIBIT A.

Utzman patent No. 1,330,413. Application filed September 3, 1918, granted February 10, 1920, expires February 10, 1937.

Birdsey patent No. 1,358,508. Application filed January 2, 1920, granted November 9, 1920, expires November 9, 1937.

Utzman patent No. 1,383,249. Application filed August 13, 1918, granted June 28, 1921, expires June 28, 1938.

Birdsey patent No. 1,383,254. Application filed July 29, 1918, granted June 28, 1921, expires June 28, 1938.

Birdsey patent No. 1,383,255. Application filed January 2, 1920, granted June 28, 1921, expires June 28, 1938.

Birdsey patent No. 1,384,298. Application filed August 19, 1920, granted July 12, 1921, expires July 12, 1938.

Birdsey patent No. 1,395,031. Application filed January 2, 1920, granted October 25, 1921, expires October 25, 1938.

Birdsey patent No. 1,395,032. Application filed January 2, 1920, granted October 25, 1921, expires October 25, 1938.

Birdsey patent No. 1,406,967. Application filed January 3, 1921, granted February 21, 1922, expires February 21, 1939.

Birdsey patent No. 1,427,939. Application filed January 3, 1921, granted September 5, 1922, expires September 5, 1939.

Birdsey patent No. 1,428,624. Application filed January 2, 1920, granted September 12, 1922, expires September 12, 1939.

Brookby patent No. 1,489,693. Application filed September 25, 1922, granted April 8, 1924, expires April 8, 1941.

Birdsey patent No. 1,514,827. Application filed October 6, 1921, granted November 11, 1924, expires November 11, 1941.

Birdsey patent No. 1,515,380. Original application filed January 2, 1920, granted November 11, 1924, expires November 11, 1941.

9381 Birdsey patent No. 1,518,243. Application filed September 22, 1922, granted December 9, 1924, expires December 9, 1941.

Birdsey patent No. 1,525,715. Application filed January 2, 1920, granted February 10, 1925, expires February 10, 1942.

Birdsey patent No. 1,526,307. Application filed October 10, 1921, granted February 10, 1925, expires February 10, 1942.

Utzman patent No. 1,540,045. Application filed March 14, 1923, granted June 2, 1925, expires June 2, 1942.

Birdsey patent No. 1,558,459. Application filed October 4, 1922, granted October 27, 1925, expires October 27, 1942.

Birdsey patent No. 1,561,635. Application filed January 3, 1921, granted November 17, 1925, expires November 17, 1942.

Armstrong patent No. 1,278,821. Application filed January 4, 1918, granted September 17, 1918, expires September 17, 1935.

Armstrong patent No. 1,348,387. Application filed March 15, 1919, granted August 3, 1920, expires August 3, 1937, application for reissue filed June 3, 1922, Serial No. 565,737, reissued January 24, 1928, as Reissue patent No. 16,860.

Armstrong patent No. 1,367,292. Application filed July 12, 1919, granted February 1, 1921, expires February 1, 1938; application for reissue filed June 9, 1922, Serial No. 567,205, reissued May 22, 1928, as Reissue Patent No. 16,969.

Utzman patent No. 1,455,127. Application filed June 14, 1922, granted May 15, 1923, expires May 15, 1940.

Utzman patent No. 1,492,588. Application filed June 14, 1922, granted May 6, 1924, expires May 6, 1941.

Williams patent No. 1,519,180. Application filed August 18, 1922, granted December 16, 1924, expires December 16, 1941.

Armstrong patent No. 1,556,575. Application filed October 1, 1921, granted October 13, 1925, expires October 13, 1942.

Armstrong patent No. 1,399,455. Application filed Feb-

ruary 24, 1920, granted December 6, 1921, expires December 6, 1938.

9382 · Tyler patent No. 1,417,117. Application filed November 15, 1919, granted May 23, 1922, expires May 23, 1939.

Birdsey patent No. 1,643,801. Application Serial No. 437,062, filed January 13, 1921, granted September 27, 1927, expires September 27, 1944.

Birdsey patent No. 1,650,930. Application Serial No. 506,676, filed October 10, 1921, granted November 29, 1927, expires November 29, 1944.

Birdsey patent No. 1,676,318. Application Serial No. 545,231, filed March 20, 1922, granted July 10, 1928, expires July 10, 1945.

Birdsey patent No. 1,710,915. Application Serial No. 555,627, filed April 19, 1922, granted April 30, 1929, expires April 30, 1946.

Smith patent No. 1,603,158. Application Serial No. 662,359, filed September 12, 1923, granted October 12, 1926, expires October 12, 1943.

Birdsey patent No. 1,666,161. Application Serial No. 737,237, filed September 12, 1924, granted April 17, 1928, expires April 17, 1945.

Utzman patent No. 1,631,108. Application Serial No. 750,224, filed November 17, 1924, granted May 31, 1927, expires May 31, 1944.

Brookby & Absmeier patent No. 1,689,322. Application Serial No. 91,297, filed March 1, 1926, granted October 30, 1928, expires October 30, 1945.

Armstrong patent No. 1,701,291. Application Serial No. 310,470, filed July 12, 1919, granted February 5, 1929, expires February 5, 1946.

Utzman patent No. 1,638,280. Application Serial No. 374,833, filed April 19, 1920 granted August 9, 1927, expires August 9, 1944.

Armstrong patent No. 1,641,611. Application Serial No. 377,421, filed April 29, 1920, granted September 6, 1927, expires September 6, 1944.

Speer patent No. 1,686,671. Application Serial No.

427,044, filed November 29, 1920, granted October 9, 1928, expires October 9, 1945.

Speer patent No. 1,641,648. Application Serial No. 427,045, filed November 29, 1920, granted September 6, 1927, expires September 6, 1944.

Mehlhope patent No. 1,604,707. Application Serial No. 473,288, filed May 28, 1921, granted October 26, 1926, expires October 26, 1943.

9383 Gustafson patent No. 1,665,168. Application Serial No. 509,366, filed December 2, 1919, renewed October 21, 1921, granted April 3, 1928, expires April 3, 1945.

Kohler et al patent No. 1,673,944. Application Serial No. 540,412, filed March 2, 1922, granted June 19, 1928, expires June 19, 1945.

Utzman patent No. 1,703,183. Application Serial No. 581,362, filed August 12, 1922, granted February 26, 1929, expires February 26, 1946.

Birdsey patent No. 1,718,890. Application Serial No. 583,795, filed August 23, 1922, granted June 25, 1929, expires June 25, 1946.

Utzman application Serial No. 477,371, filed June 14, 1921, finally allowed April 26, 1929. Patent No. 1,731,116, will issue October 8, 1929.

Knode patent No. 1,754,429. Application Serial No. 590,358, filed September 25, 1922, granted April 15, 1930, expires April 15, 1947.

Utzman patent No. 1,824,245. Application Serial No. 581,361, filed August 12, 1922, granted September 22, 1931, expires September 22, 1948.

*Roos patent No. 2,017,022. Application Serial No. 733,197, filed August 20, 1924, granted October 8, 1935, expires October 8, 1952.

*Roos application Serial No. 3477, filed January 19, 1925.

Roos application Serial No. 142,155, filed October 16, 1926.

Haggerty patent No. 1,500,452. Application Serial No. 565,433, filed June 2, 1922, granted July 8, 1924, expires July 8, 1941.

9384 *Government's Exhibit No. 9*

LICENSE AGREEMENT

This agreement, executed in duplicate this 17th day of October, 1929, by and between the United States Gypsum Company, an Illinois corporation, of Chicago, Illinois, hereinafter referred to as Licensor, and National Gypsum Company, a Delaware corporation having its principal office at Buffalo, New York, hereinafter referred to as Licensee, witnesseth:

Whereas, Licensor is the owner of certain letters patent and applications for letters patent of the United States covering an improved gypsum wallboard and method or process of making the same, together with machines and appliances for the manufacture of such inventions, which with certain other patents are more specifically set forth in Exhibit A attached hereto and made a part hereof; and

Whereas, Licensor was the owner of all of the right, title and interest in and under Letters Patent of the United States, number 1,029,328 and number 1,034,746, known as the Utzman patents, the last of which expired August 6, 1929, which said Utzman Patents were adjudicated by the United States District Court for the Northern District of Illinois, Eastern Division, and by the United States Circuit Court of Appeals for the Seventh Circuit, and were decreed by said courts as valid and having been infringed by the defendants named in said suits; and

Whereas, the Birdsey Patent number 1,358,508, mentioned in said Exhibit A, was adjudicated by the United States District Court for the Northern District of Ohio, and said court decreed that said Birdsey Patent was
9385 valid and infringed by the defendant in said cause by reason of its having made, used and sold plasterboard and/or gypsum wallboard with edges of the character disclosed in said patent, and said District Court ordered a perpetual injunction and accounting against defendant, which cause is now pending on appeal before the United States Circuit Court of Appeals for the Sixth Circuit; and

Whereas, Licensor has a substantial claim against Licensee for damages and profits because and on account of an alleged infringement of said patents, and Licensor agreed to grant a license to Licensee under said patents

(not including the Roos or Bayer applications and the Haggerty or Hite patents referred to in said Exhibit A) to February 10, 1937, and to settle the said claim in consideration of the payment by the Licensee to Licensor of five per cent (5%) of Licensee's selling price of all plasterboard and/or gypsum wallboard manufactured and sold by it until August 6, 1929, and one and one-half per cent (1½%) of such selling price from August 6, 1929, to February 10, 1937, plus three and one-half per cent (3½%) of such selling price from August 6, 1929, until said three and one-half per cent (3½%) of such selling price aggregated the fixed sum of One Hundred Seventy Eight Thousand Two Hundred Thirteen Dollars and Six Cents ($178,213.06); and

Whereas, Licensor is the owner of that certain application for United States letters patent filed by Carlisle K. Roos, entitled "Cementitious Material," now pending in the United States Patent Office and covering the process of making a cellular product, which comprises forming a tenacious foam and mixing the foam with a cementitious material, and of certain other applications filed by said Roos covering specific employment of said invention,
9386 and Licensor has heretofore acquired the able and exclusive rights in the United States of America (when gypsum is used as the main binding material) in that certain application for United States letters patent described in said Exhibit A filed by Erik Christian Bayer, entitled "Methods of Manufacturing Porous Builing Materials," and relating to a process broadly similar to that of said first mentioned Roos application, which said Roos and Bayer applications are described and set forth in said Exhibit A; and

Whereas, Licensor has agreed to purchase that certain Haggerty patent number 1,500,452 dated July 8, 1924, and that certain Hite Patent number 1,230,297 dated June 19, 1917, subject to approval of the United States District Court for the Northern District of Illinois, Eastern Division thereof, and other United States District Courts in receivership proceedings therein pending against the present owner of said patents, both of which said patents are set forth in said Exhibit A; and

Whereas, Licensee desires to include in its manufacture the inventions and improvements set forth and claimed in the said Roos and Bayer applications and said Haggerty and Hite patents referred to in said Exhibit A, and to ob-

tain a license from Licensor to make, use and sell the inventions and improvements set forth and claimed in all of said patents and applications for letters patent described in said Exhibit A throughout the full term thereof, and Licensor has agreed to grant such a license to Licensee upon the terms and conditions hereinafter stated;

Now, therefore, in consideration of the sum of One Dollar and other good and valuable considerations, the receipt whereof is hereby acknowledged from each party to the other party, and in consideration of the mutual covenants and agreements hereinafter contained, the parties hereto do hereby agree as follows, to-wit:

1. Licensor agrees promptly to disclose to Licensee all information and formulae which it now has or may obtain relating to the process of making a cellular product through the formation of a tenacious foam and mixing the 9387 foam with a cementitious material, as set forth and claimed in said applications for letters patent filed by Carlisle K. Roos and Erik Christian Bayer, in so far as the same is or may be applied to gypsum, and including all information and formulae for the manufacture of gypsum plasterboard and gypsum wallboard embodying the inventions and improvements set forth and claimed in said Roos and Bayer applications, together with a description of the machines or appliances which it now has for making the same. It will assist Licensee to make its plant ready for practicing said process in the manufacture of plasterboard and gypsum wallboard by furnishing without cost to Licensee the advice and instruction of Licensor's experts and information with respect to the purchase and cost of said machines and appliances.

2. Licensor has agreed to and does hereby give and grant unto Licensee an indivisible and non-exclusive right, license and privilege of using the process or processes and making and using the machines and/or inventions set forth and claimed in any and all of said patents and/or applications for letters patent set forth in Exhibit A attached hereto in the manufacture of gypsum plasterboard and/or gypsum wallboard at the plants or factories now owned and/or operated by Licensee, or at any other plant or factory hereafter owned and/or operated or controlled by it or any subsidiary, associated or affiliated company, and of manufacturing at any such place or places, selling and using in the United States of America and the territories

and possessions thereof gypsum plasterboard or gypsum wallboard manufactured at any such place or places and embodying the inventions and improvements set forth and claimed in said patents and/or applications for let-
9388. ters patent described in said Exhibit A, for the full term of said letters patent or of any letters patent which may be granted for or upon any of said applications, including any extensions and/or reissues thereof.

It is expressly understood and agreed that the indivisible and non-exclusive right, license and privilege aforesaid is granted upon condition that the Licensor shall have and it hereby reserves the right to determine and fix at any time and to change from time to time during the existence of said patents and so long as said license shall continue, the minimum price or prices at which Licensee shall sell any plasterboard or gypsum wallboard manufactured by Licensee by use of any of the machines or appliances covered by any of said letters patent and which shall embody the inventions and improvements set forth and claimed in any of said patents which are presently issued, or any of said plasterboard or gypsum wallboard manufactured by second parties and which shall embody the inventions and improvements set forth and claimed in either patent number 1,500,452 or patent number 1,230-297, or commencing with the date when a patent shall have been granted or issued for or upon any of the said Roos or Bayer inventions and/or applications any of said plasterboard or gypsum wallboard manufactured by Licensee, the body or core of which is made according to the process set forth and claimed in any patent granted for or upon any of said Roos or Bayer inventions and/or applications, and in case Licensor shall exercise the right so reserved, it shall first serve written notice of its intention so to do upon Licensee, accompanied with a statement of the minimum price or prices at which Licensee shall sell said gypsum plasterboard or
9389 gypsum wallboard, and thereafter shall give to Licensee written or telegraphic notice of any change in such price or prices, and Licensee expressly covenants and agrees that it will not, so long as this agreement shall continue in force and effect and after receipt of such notice given in accordance with the terms and conditions hereof, directly or indirectly, sell or offer for sale any gypsum plasterboard or gypsum wallboard manufactured by it by use of any of the machines or appliances covered by any of said patents and which during the existence thereof shall

embody the inventions and improvements set forth and claimed in any of said patents which are presently issued, or any gypsum plasterboard or gypsum wallboard manufactured by second parties and which during the existence thereof shall embody the inventions and improvements set forth and claimed in either patent number 1,500,452 or patent number 1,230,297, or any gypsum plasterboard or gypsum wallboard manufactured by Licensee after a patent shall have issued upon any of the said Roos or Bayer inventions and/or applications and during the existence thereof, the body or core of which is made according to the process set forth and claimed in any patent granted for or upon any of said inventions and/or applications, at a price or prices less than that stated by Licensor in said notice or in any such written or telegraphic notice of a change in such price or prices.

Said minimum price shall not be more than that price at which Licensor determines to sell plasterboard or gypsum wallboard embodying the inventions and improvements set forth and claimed in said patents to its own like trade in the same market.

9390 3. Licensee agrees to pay to Licensor in settlement and discharge of said claim and for said disclosures, information and assistance and the agreements of Licensor herein contained, and for the right, license and privilege of using the processes and making and using the machines and/or inventions in the manufacture of plasterboard and gypsum wallboard covered by said patents and applications for letters patent described in said Exhibit A, and for the privilege of manufacturing, using and/or selling plasterboard and gypsum wallboard embodying the inventions and improvements set forth and claimed in said patents and applications for letters patent, an amount (hereinafter for convenience referred to as a license fee or royalty) equivalent to three and one-half per cent (3½%) of the selling price of Licensee of all plasterboard and gypsum wallboard of every kind, whether or not made by the use of said machines and/or embodying the inventions and improvements set forth and claimed in said letters patent or applications for letters patent, manufactured and sold by Licensee between the date hereof and February 10, 1937, the date of the expiration of patent number 1,330,413 mentioned in said Exhibit A, and thereafter an amount equivalent to two per cent (2%) of the selling price of Li-

censee of all such plasterboard and gypsum wallboard manufactured and sold by it between February 10, 1937, and July 8, 1941, the date of the expiration of said patent number 1,500,452, and thereafter an amount equivalent to one per cent (1%) of the selling price of Licensee of all such plasterboard and gypsum wallboard manufactured and sold by it between July 8, 1941, and the date of the expiration of the last to expire of any patent granted or issued for or upon any of the said Roos or Bayer applications; Provided, However, that if no patent shall
9391 have been granted or issued for or upon any of said Roos or Bayer applications covering said process referred to in paragraph 1 hereof, within two (2) years from the date hereof, then commencing with the end of said two (2) year period the said license fees or royalties agreed to be paid by Licensee shall be reduced by one per cent (1%) of Licensee's said selling price until such patent shall have been granted or issued for or upon any of said Roos and Bayer applications, at which time Licensee shall again commence to pay the full amount of said license fees or royalties until the date of the expiration of the last to expire of any such patent or patents. If at the time of the execution of this contract Licensee's plant shall not be equipped to practice the process set forth and claimed in said Roos or Bayer applications in the manufacture of plasterboard or gypsum wallboard, then Licensee shall pay as such license fees or royalties two and one-half per cent (2½%) of said selling price between the date hereof and January 1, 1930, or such earlier date as Licensee shall make its plant ready to practice said process in the manufacture of said board, and the payment of three and one-half per cent (3½%) of said selling price and said period of two (2) years in this paragraph mentioned shall commence on January 1, 1930, or such earlier date as Licensee shall have made its plant ready as aforesaid. The amount of one per cent (1%) of said selling price included in said royalties or license fees in the amount agreed to be paid by Licensee for the use of said Haggerty and Hite patents..

Licensee's selling price shall mean the delivered selling price of Licensee, less freight paid by the customer and less regular cash discounts allowed by Licensee.

In addition to the amounts hereinabove agreed to be

paid by Licensee, Licensee, in further consideration
9392 of said license and in settlement of said claim, shall pay to Licensor an amount hereinafter referred to as a license fee or royalty equivalent to one and one-half per cent (1½%) of the selling price of Licensee of all such plasterboard and/or gypsum wallboard manufactured and sold by it after the date hereof, and until said one and one-half per cent (1½%) of said selling price shall have aggregated the sum of $173,644.95, being the full amount of said fixed sum which is unpaid up to date hereof. It is understood and agreed that if prior to the expiration of said license granted in paragraph 2 hereof Licensee shall not have paid to Licensor said additional sum of $173,644.95, over and above said other license fees or royalties, then Licensee shall from the date of the expiration of said license pay to Licensor five per cent (5%) of the selling price of Licensee of all plasterboard and/or gypsum wallboard manufactured and sold by it until said sum of $173,644.95 shall have been fully paid and satisfied.

It is expressly understood and agreed that this contract is executed without prejudice to Licensor to assert its said claim against Licensee for infringement of its said patents in case for any reason this contract shall not remain in force until February 10, 1937, and Licensee shall not pay to Licensor all of said royalties or license fees agreed to be paid by it up to said last mentioned date, and in addition thereto said one and one-half per cent (1½%) of said selling price until said fixed sum shall have been fully paid in accordance with the terms hereof, and it is further agreed that the claim of Licensor against Licensee for said infringement is not settled or discharged by the execution of this instrument but shall only be settled and discharged by the full performance of this contract by Licensee up to February 10, 1937, and the payment to Licensor of all of said royalties or license fees up
9393 to said last mentioned date, including said one and one-half per cent (1½%) of said selling price until said fixed sum shall have been fully paid. In case of the termination of this contract at any time prior to February 10, 1937, for any reason, or in the event of the failure of Licensee to make full payment to Licensor of all of said royalties or license fees up to said last mentioned date, including said one and one-half per cent (1½%) of said selling price until said fixed sum is fully paid in the manner herein specified, Licensor shall have the same right which

it originally had against Licensee before the execution of this agreement or the execution of any license agreement between Licensee and Licensor with respect to any of said patents, to recover of and from Licensee the full amount of its said claim for damages for infringement of its said patents, and nothing herein contained shall prevent the recovery by Licensor of all of its damages for such infringement against Licensee according to the full measure of damages allowed in such cases the same as if this contract or any other license contract made between Licensor and Licensee had never been made, less only such sums as shall have been paid by Licensee to Licensor since the date, hereof, on account of said additional one and one-half per cent (1½%) of said selling price in reduction of said fixed sum of $173,644.95, in either of which events Licensee shall pay to Licensor the balance of said fixed sum then remaining unpaid in part payment of its said claim for damages, it being understood that in no event shall the recovery from Licensee in such case be less than the amount of said fixed sum then remaining unpaid. Upon the payment to Licensor of all of said royalties or license fees up to February 10, 19^7, plus said additional sum of $173,644.95 at the time
9394 and in the manner herein specified, then the said claim of Licensor against Licensee for infringement of its said patents shall thereupon be and become fully settled, discharged and satisfied.

4. It is further agreed that so long as the license provided for in paragraph 2 hereof shall remain in force between the parties hereto, or in case the license granted under paragraph 2 hereof shall expire before the expiration of the patents specifically described in this paragraph, and the said license granted under paragraph 2 shall continue in force between the parties hereto for the full term of the last to expire of any of said patents described in said Exhibit A, or of any patent or patents granted for or upon any applications described in said Exhibit A, then until the expiration of the patents specifically described in this paragraph, Licensor does hereby give and grant unto the Licensee an indivisible and non-exclusive right, license and privilege of making and using the inventions set forth and claimed in those certain patents known as the Birdsey Plasterboard Bundle Patent number 1,696,877, dated December 25, 1928, Utzman Patent

number 1,724,740 dated August 13, 1929, Birdsey Patent number 1,730,113 dated October 1, 1929, and applications for letters patent serial numbers 329,581 filed December 31, 1928, and 296,354 filed July 30, 1928, and any patent which may be granted for or upon said applications, including any extensions and/or reissues thereof, at the plants or factories now owned or operated by Licensee or at any other plant or factory hereafter owned and/or operated and controlled by Licensee or any subsidiary, associated or affiliated company of Licensee, and of selling or using bundles of plasterboard and/or gypsum wallboard put up or bundled by Licensee at any such place or places according to the claims set forth and claimed in the said patents and applications for letters patent in this paragraph described, upon the terms and conditions hereinafter stated.

Licensee agrees to pay to Licensor for the right, license and privilege of making, using or selling the inventions set forth and claimed in said patents and applications 9395 in the next preceding paragraph described, in addition to the sums hereinabove set forth, an amount (hereinafter referred to as a license fee or royalty) equivalent to ten cents (10¢) per one thousand (1,000) square feet of plasterboard and/or gypsum wallboard which is sold by Licensee in bundles of any kind, whether or not the bundles shall be made according to the claims set forth and claimed in said patents, which said license fee or royalty shall be payable at the times and in accordance with the terms of paragraph 6 hereof. The term "bundle" shall not include unbundled material wired or strapped for purpose of transportation or unbundled material shipped for export or coastwise trade in fiber, wooden or other crates.

5. It is expressly understood and agreed that the license herein granted shall be personal to the Licensee, and that the same or any right herein or thereunder shall not be sold or assigned or transferred without the written consent of Licensor, or transferred by operation of law: Provided, However, that the same may be assigned by Licensee to any company acquiring all the assets and business or all of the capital stock of Licensee, on condition that Licensee shall first obtain an agreement in writing from any such assignee agreeing to assume all of the obligations of Licensee under this agreement and to be bound

by all of the terms and conditions hereof and shall deliver such agreement to Licensor. Licensee agrees not to sell all of its assets and business or all of its capital stock or to transfer and convey its plasterboard and/or wallboard business, or its assets used in connection therewith, without requiring the purchaser or purchasers thereof to assume, in writing, all of the obligations of Licensee hereunder, including the asumption of the claim which Licensor has against Licensee for damages for infringement of its said patents and the agreements in settlement and discharge thereof, as in this contract contained, and to agree to be bound by all of the terms and conditions of this
9396 contract, and deliver such agreement to Licensor.

It is expressly understood that Licensee shall not discontinue its business of manufacturing and selling plasterboard and/or gypsum wallboard until Licensor shall have received the full amount of said license fees or royalties agreed to be paid by Licensee hereunder for the use of all of said patents until February 10, 1937, plus the full payment of said fixed sum of $173,644.95 in the manner and upon the payments as hereinabove set forth.

6. Licensee agrees to keep separate, full and accurate books of account and records showing the exact quantity of all plasterboard and gypsum wallboard manufactured and sold by it, as well as a separate record of all plasterboard and/or gypsum wallboard sold by it in bundles, and agrees that on or before the twentieth day of each calendar month it will render unto Licensor true written returns verified under oath by an officer or other agent of Licensee, setting forth the quantity of all plasterboard and/or gypsum wallboard manufactured and sold by it during the preceding calendar month and the quantity thereof put up and sold by it in bundles, together with the price or prices at which the same was sold and is to be accounted for hereunder, such written returns to be delivered to Licensor at its office in Chicago, Illinois, and Licensee agrees to pay to Licensor on or before the 20th day of each calendar month at the office of Licensor at Chicago, Illinois, the hereinbefore stipulated royalties or license fees which may then be due under this agreement on account of all said plasterboard and/or gypsum wallboard manufactured and sold by it and put up and sold by it in bundles during the next preceding calendar month.

7. Licensor, or its duly authorized representative,
9397 shall have the right at all reasonable times during business hours to inspect the books of account and records of Licensee referred to in the next preceding paragraph hereof, including all records of every kind showing the quantity of said plasterboard and gypsum wallboard manufactured and sold by it and the quantity thereof put up and sold by it in bundles and the price or prices at which the same was sold, and to make copies thereof and memoranda therefrom; Provided, However, that if at the time of any such examination Licensee shall request it in writing, then such examination shall be made by a certified public accountant agreed upon between the parties hereto, in which event the expense thereof shall be borne equally by both parties. If the parties at any such time shall not agree upon the certified public accountant to make such examination, then Licensor shall name three certified public accountants of good standing not directly or indirectly employed by it or in any other way connected with it, and if Licensee shall not accept any one of them, then Licensor shall have the right to make such examination itself.

8. Licensee agrees that all plasterboard or gypsum wallboard manufactured and sold by it embodying the claims of any of said patents and/or applications for letters patent shall be distinctly marked with the words "Patented" and/or "Patent applied for," as the case may be, together with the numbers of any of said patents or applications specified by Licensor, the claims of which may be embodied in said plasterboard or gypsum wallboard, and in connection with said marking Licensee will further mark said board with the words "Licensed under the above letters patent" and/or "Licensed under pending applications for letters patent," as the case may be, which marking shall be plainly visible. Licensee further agrees that all bundles put up and sold by it embodying the
9398 claims of any of said patents numbers 1,696,877, 1,724,740 and 1,730,113 and/or any of said applications serial numbers 329,581 and 296,354 shall be similarly marked together with the numbers of said bundle patents and/or applications.

9. Having regard for the fact that there are or may be certain manufacturers of plaster or gypsum products, jobbers or other wholesale distributors of such products,

who do not or may not manufacture gypsum wallboard or plasterboard but who desire or may desire to have gypsum wallboard or plasterboard manufactured for them, it is understood and agreed that Licensee may manufacture for jobbers (being those who do not manufacture but buy and sell plasterboard or gypsum wallboard in straight cars or in mixed cars with other building material and who do not sell at retail) gypsum wallboard or plasterboard embodying the inventions and improvements set forth and claimed in said letters patent or in any letters patent after the same shall have been issued, granted for or upon any of the said applications and may with the written consent of first party manufacture for any such other manufacturer or other wholesale distributor, gypsum wallboard or plasterboard embodying the said inventions and improvements; Provided, However, that the said license fee or royalty to be paid to Licensor as hereinbefore provided shall be based upon all gypsum wallboard and plasterboard manufactured for and sold and invoiced to such other manufacturer, jobber or wholesale distributor and upon the regular selling price of Licensee of such plasterboard or gypsum wallboard to its regular dealer trade at the time of such sale and invoice, and shall not be based upon the price at which plasterboard or gypsum wallboard is sold and invoiced by Licensee to such other manufacturer, jobber or wholesale distributor Nothing hereinbefore contained in this agreement shall be construed to give Licensee the right to manufacture gypsum plasterboard or gypsum wallboard embodying the inventions and improvements set forth and
9399 claimed in any of said letters patent or in any letters patent after the same shall have been granted for or upon any of said applications for said other manufacturers or wholesale distributors and to sell the same, without the written consent of Licensor.

10. Licensee covenants and agrees that all of said gypsum plasterboard and gypsum wallboard manufactured and sold by it embodying the inventions and improvements set forth and claimed in any of said letters patent or patents issued upon any of said applications and commonly known in the trade as "seconds" shall be plainly invoiced as "Seconds" and shall be plainly marked with a visible red stamp or label firmly fixed on each of said boards showing the word "Seconds" in letters at least three inches in height.

11. As one of the considerations for the indivisible and non-exclusive license herein and hereby granted, Licensee hereby acknowledges the validity of said letters patent or of any letters patent which may be granted or issued for or upon said applications, forming the subject-matter of said license so long as said license shall remain in full force and effect, and agrees that it will not at any time during the existence of said license, directly or indirectly, by itself, through or together with another or others, contest the validity of either or any of said letters patent or the title thereto of Licensor. Licensee heretofore having posted a bond to stay an injunction from violating the said Haggerty patent and having recognized in open court the scope and validity of said patent, does hereby acknowledge the validity of the said Haggerty patent forming the subject-matter of this license throughout the full terms of this contract, unless the same shall be canceled or terminated prior thereto by reason of the default of the Licensor hereunder, and agrees that it will not at any time before the expiration date of said Hag-
9400 gerty patent, or the earlier termination of the license by reason of the default of the Licensor hereunder, directly or indirectly, by itself, through or together with another or others, contest the validity of said Haggerty patent or the title thereto of Licensor, or question in any way the prima facie scope of any of the claims of said Haggerty patent.

12. In the event that either party shall at any time neglect, fail or refuse to keep or perform any of the conditions or agreements herein to be kept by it and performed, then the other party, at its election, may serve upon the party in default written notice of intention to terminate this license, which notice shall specify the alleged neglect, failure or refusal, and if within thirty (30) days from the date of delivery of said notice the party in default shall not cure the default specified in said notice, then the other party may cancel and terminate this agreement by notifying the party in default in writing of its election so to do, without the necessity of any court action; Provided, However, that neither party shall be relieved thereby from any liability accrued at the time of such termination; and Provided Further, that if the party upon whom said notice is served shall deny that it is in default in whole or in part, as specified therein, then the party serving such notice shall not be privileged to cancel this contract on account of the alleged default

specified therein, provided the party upon whom said notice shall have been served shall within said thirty (30) day period perform the agreements and submit the question to arbitration, as in this paragraph hereinafter set forth. In case of any such denial the party upon whom the notice shall have been served shall within said thirty (30) day period state in writing to the other party wherein and in what respect it denies the default specified in said notice and shall at the same time make
9401 good any default specified therein which it does not deny and appoint in writing one person as arbiter to arbitrate the question of whether or not it is in default in respect to that which it shall have denied as aforesaid, it being understood, however, that if the question shall be with respect to the amount of royalties or license fees to be paid hereunder, then the Licensee shall first pay or offer to pay the amount of such license fees or royalties which it then admits is due and payable in accordance with the terms hereof, and the acceptance thereof by the Licensor shall not operate as a waiver of any of its rights hereunder or of any claim it may have made in any notice served by it upon Licensee. The party so serving said notice shall, after the other party shall have made good any default specified in said notice which it did not deny in writing as aforesaid, including the payment of royalties or license fees, if any, admitted by it to be due and payable hereunder, and within ten (10) days from the date of the appointment of said first arbiter in accordance with the terms hereof, appoint in writing another person as arbiter, and the two persons so appointed shall within ten (10) days or as soon as possible thereafter appoint in writing a third person as arbiter. The three persons so appointed shall, within thirty (30) days from the date of the appointment of said last mentioned arbiter, or as soon as possible thereafter, decide whether or not the party upon whom said notice has been served is in default hereunder with respect to anything contained in said notice. The decision of a majority of the three arbiters so appointed shall constitute a final settlement of the said question and be binding and conclusive upon both the Licensor and the Licensee, and if it shall have been determined by a majority of the said arbiters that the party upon whom said notice was served is in default with respect to anything contained in said notice and the party so found to have been in de-

9402 fault shall fail or refuse to comply with the terms of the award or finding made by said arbiters within thirty (30) days from the date such award or finding shall have been made, the party serving said notice may at its election terminate and cancel this agreement in writing. In the event of default hereunder by either party and notice of such default is served by the other party as herein provided, and after service of such notice the party in default shall cure the same as hereinbefore provided the same shall constitute a nullification of said notice to the same effect as if said notice had not been served. In case at any time the Licensee shall be adjudged a bankrupt, then the license hereunder shall immediately be and become canceled and terminated, but the Licensor shall not thereby be prevented from collecting all license fees or royalties accrued hereunder at the time of such termination. The waiver of any breach by either party shall not be interpreted as constituting a waiver of any further breach or breaches. Either party may proceed by action to specifically enforce this contract or any of the terms, conditions and covenants thereof by injunction or in such other manner as may be provided by law.

13. Any notice to be given under the terms hereof may be served by the Licensor or the Licensee by mailing the same to the other party hereto, postage prepaid and registered, addressed to any of its officers at its last known principal office, and the deposit of any such notice in the United States mails, postage prepaid and so addressed, shall constitute service of notice hereunder. Any telegraphic notice given under paragraph 2 hereof shall be confirmed in writing in the ordinary course of business.

14. It is understood and agreed that if at any time during the term hereof the Licensee shall, in the judgment of the Licensor, suffer substantial detriment by 9403 reason of any infringement on the part of any person or persons of any of said letters patent or of any patent that may be granted upon said applications, under which this license is granted, the Licensor will afford the Licensee such reasonable protection as in the judgment of the Licensor shall be necessary or proper. If a court of last resort upon final appeal or review shall decree all the claims of the patents granted for or upon said Roos and Bayer applications invalid or Licensee shall be permanently enjoined from manufacturing plasterboard and gypsum wallboard, the body or core of which

is made according to the process set forth and claimed in said Roos and Bayer applications in such manner that they cannot practice in any way any of the inventions set forth in the said applications, and such injunction shall be made final by a court of last resort upon final appeal or review, then from the time the court of last resort upon final appeal or review shall decree that all the claims of the patents granted or issued for or upon said Roos and Bayer applications are invalid or make such injunction permanent and final, the license fees or royalties to be paid by Licensee hereunder shall be reduced by one per cent (1%) of said selling price, or if a court of last resort upon final appeal or review shall decree that all the claims of said Haggerty and Hite patents are invalid or Licensee shall be permanently enjoined from manufacturing plasterboard and gypsum wallboard embodying the inventions and improvements set forth and claimed in said Haggerty and Hite patents in such manner that they cannot practice in any way any of the inventions set forth in said patents, and such injunction shall be made final by a court of last resort upon final appeal or review, then from the time the court of last resort upon final appeal or review shall decree all claims of said Haggerty and Hite patents invalid or make said injunction permanent and final, the said license fees or royalties agreed to be paid by Licensee for said
9404 Haggerty and Hite patents shall cease and determine.

15. In case Licensor shall, subsequent to the effective date hereof, grant to any other person except Abel Davis and Eugene Holland, receivers of the Universal Gypsum & Lime Co. or their successors or to the said Universal Gypsum & Lime Co., any license under said patents or applications for letters patent set forth in said Exhibit A and paragraph 4 hereof for the manufacture, sale or use of gypsum plasterboard or gypsum wallboard or bundles thereof, embodying the claims or inventions set forth and claimed in said patents or said applications, or shall grant any right under any such license, upon terms more favorable than those granted hereunder to this Licensee, then it will grant to this Licensee a license on the same terms or extend to it the same right granted to any such other person. This paragraph shall not apply to any license granted on or prior to the effective date hereof, nor shall the same apply to the terms of settlement

of any claim of Licensor or provisions with respect to the payment thereof, contained in any such license.

16. The terms "gypsum plasterboard," "gypsum wallboard" and "plasterboard" shall be understood to mean all board made of gypsum, by whatever name called, having the characteristics of gypsum plasterboard or gypsum wallboard, irrespective of the purpose for which the same may be sold or used, and shall include gypsum laths and all other gypsum boards.

17. If at any time after the expiration of two (2) years from January 1, 1930, or such earlier date that Licensee shall make its plant ready to practice the process set forth and claimed in said Roos and Bayer applications in the manufacture of gypsum wallboard or plasterboard, there shall have been invented or come into use any process which shall make the said process of forming a 9405 cellular product as set forth and claimed in said Roos and Bayer applications obsolete or shall displace the same, and the Licensor shall in its own manufacture permanently and wholly abandon the use of the subject-matter of the claims of said Roos and Bayer applications, it shall notify Licensee in writing thereof, and Licensee may then, upon thirty (30) days' written notice to Licensor, cancel and terminate this license in so far as the same applies to said Roos and Bayer applications or to the patent or patents granted or issued therefor or thereupon, and from the date of such cancellation the royalties or license fees to be paid by Licensee hereunder shall be reduced by one per cent (1%) of its said selling price; Provided, However, that if Licensor shall not in such event permanently and wholly abandon the use of said process but shall only partially abandon the same, then to the extent or degree and for the term that Licensor shall abandon the same in its own manufacture Licensee shall be relieved from the payment of license fees or royalties to the same extent, that is to say, if Licensor shall in such event manufacture and sell any board the core of which is made of gypsum of a particular size, kind or make, or for a particular purpose or use, without the use of said process embodied therein, then if Licensee shall manufacture and sell the same board of the same particular size, kind or make and

for the same purpose or use, without the use of said process embodied therein, then Licensee shall not be required to pay royalties or license fees upon such particular board for the term that Licensor shall manufacture and sell the same. "License fees" and "royalties" for the purpose of this paragraph shall mean one per cent (1%) of said selling price. The use by Licensor of any improvement which Licensee has the right to use as set forth in paragraph 18 hereof, or the manufacture of plasterboard or gypsum wallboard without the use of said process for sale only in foreign countries
9406 where Licensor has no patented rights in said process, shall not constitute an abandonment of said process or a partial abandonment thereof within the meaning of this paragraph.

18. If Licensor shall at any time during the existence of this agreement make or obtain any improvement for the formation of the bubble described in the process set forth in said Roos and Bayer applications and/or method of its introduction in the core of plasterboard or gypsum wallboard, and which improvement is covered by the claims of said Roos and Bayer applications, and shall itself use the same in its own manufacture, then so long as Licensee shall continue to pay the license fees or royalties hereinbefore stipulated the right, license or privilege herein contained shall be extended to and include the use of said improvement in the manufacture by Licensee of gypsum plasterboard or gypsum wallboard, subject to all of the terms and conditions herein contained, except only that Licensee shall not be required to pay any additional sum, royalty or license fee therefor. It is further understood that if a patent or patents shall be granted or issued for or upon said improvement, then all of the provisions of this agreement, as well as the provision of paragraph 2 hereof reserving the right in Licensor to determine and fix at any time and to change from time to time the minimum price or prices at which Licensee shall sell any gypsum plasterboard or gypsum wallboard manufactured by Licensee and embodying the claims of said patents, shall apply to the improvement set forth and claimed in any patent or patents granted or issued for or upon said improvement. Licensor will promptly notify Licensee of the general adoption by it

of any such improvement in its own manufacture, together with such information as it may possess as to the use thereof in the manufacture of plasterboard and gypsum wallboard.

9407 19. Licensee has investigated and fully satisfied itself with respect to the inventions and improvements set forth in said patents and applications for letters patent and the use thereof in its own manufacture, and has executed this agreement without relying upon any representations which may have been made by Licensor with respect thereto. No representations have been made by Licensor not expressly stated in this contract which Licensee shall at any time have any right to rely upon as an inducement for its making this contract or for any result or results to be obtained by Licensee in its own plant by its use of the inventions and improvements set forth and claimed in any of said patents or applications for letters patent.

20. The Licensor agrees at any time during the term hereof to extend to Licensee, upon its written request, an indivisible and non-exclusive license or privilege to use the said process or processes set forth and claimed in said Roos or Bayer applications in the manufacture in its said plants of any other gypsum product not specifically covered by this agreement and in which Licensor shall use the same in its own manufacture and to sell the same, upon the payment to Licensor of one per cent (1%) of the selling price of Licensee of all of said other gypsum product, whether or not embodying the said process in making the same, manufactured and sold by Licensee and upon the same terms as set forth herein and subject to all of the conditions hereof, in which event in the agreement for the same there shall be substituted for the words "plasterboard and/or gypsum wallboard" the name of such other product or products. An agreement containing all of said terms and conditions shall be reduced to writing and signed by both parties before the same shall become effective.

21. From the date this contract shall become effective the same shall supersede all prior license agree-
9408 ments at any time made between the parties hereto relating to the subject-matter hereof or relating to any of the patents or applications for letters patent referred to in this agreement; Provided, However, that Licensor shall not be barred or prevented from recovering

any claim which may have accrued under any such prior license agreements prior to the time this contract shall become effective, including all payments, royalties or license fees agreed to be paid thereunder by Licensee up to the date this agreement shall go into effect.

22. This license and all of the covenants and agreements hereof shall become effective upon the date Licensor shall receive a conveyance and assignment of said Haggerty and Hite patents to it, pursuant to authority granted by the United States District Court to the receivers of the Universal Gypsum & Lime Co., a Delaware corporation, and to said company, to sell and assign said Haggerty and Hite patents to Licensor, and from the effective date therof this license and all of the covenants and agreements hereof shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto, but nothing in this paragraph shall be contsrued to permit an assignment hereof by Licensee, except as hereinabove specifically provided.

In witness whereof the parties hereto have caused these presents to be signed by their respective presidents, attested by their respective secretaries and their corporate seals to be hereunto affixed in duplicate the day and year first above written.

UNITED STATES GYPSUM COMPANY,

By S. L. AVERY,

Its President.

ATTEST:

R. G. BEAR,

Secretary.

NATIONAL GYPSUM COMPANY,

By M. H. BAKER,

Its President.

ATTEST:

F. E. DAVIS,

Secretary.

9409 EXHIBIT "A"

Utzman patent No. 1,330,413. Application filed September 3, 1918, granted February 10, 1920, expires February 10, 1937.

Birdsey patent No. 1,358,508. Application filed January 2, 1920, granted November 9, 1920, expires November 9, 1937.

Utzman patent No. 1,383,249. Application filed August 13, 1918, granted June 28, 1921, expires June 28, 1938.

Birdsey patent No. 1,383,254. Application filed July 29, 1918, granted June 28, 1921, expires June 28, 1938.

Birdsey patent No. 1,383,255. Application filed January 2, 1920, granted June 28, 1921, expires June 28, 1938.

Birdsey patent No. 1,384,298. Application filed August 19, 1920, granted July 12, 1921, expires July 12, 1938.

Birdsey patent No. 1,395,031. Application filed January 2, 1920, granted Octtober 25, 1921, expires October 25, 1938.

Birdsey patent No. 1,395,032. Application filed January 2, 1920, granted October 25, 1921, expires October 25, 1938.

Birdsey patent No. 1,406,967. Application filed January 3, 1921, granted February 21, 1922, expires February 21, 1939.

Birdsey patent No. 1,427,939. Application filed January 3, 1921, granted September 5, 1922, expires September 5, 1939.

Birdsey patent No. 1,428,624. Application filed January 2, 1920, granted September 12, 1922, expires September 12, 1939.

Brookby patent No. 1,489,693. Application filed September 25, 1922, granted April 8, 1924, expires April 8, 1941.

Birdsey patent No. 1,514,827. Application filed October 6, 1921, granted November 11, 1924, expires November 11, 1941.

Birdsey patent No. 1,515,380. Original application filed January 2, 1920, granted November 11, 1924, expires November 11, 1941.

9410 Birdsey patent No. 1,518,243. Application filed September 22, 1922, granted December 9, 1924, expires December 9, 1941.

Birdsey patent No. 1,525,715. Application filed January 2, 1920, granted February 10, 1925, expires February 10, 1942.

Birdsey patent No. 1,526,307. Application filed October 10, 1921, granted February 10, 1925, expires February 10, 1942.

Utzman patent No. 1,540,045. Application filed March 14, 1923, granted June 2, 1925, expires June 2, 1942.

Birdsey patent No. 1,558,459. Application filed October 4, 1922, granted October 27, 1925, expires October 27, 1942.

Birdsey patent No. 1,561,635. Application filed January 3, 1921, granted November 17, 1925, expires November 17, 1942.

Armstrong patent No. 1,278,821. Application filed January 4, 1918, granted September 17, 1918, expires September 17, 1935.

Armstrong patent No. 1,348,387. Application filed March 15, 1919, granted August 3, 1920, expires August 3, 1937; application for reissue filed June 3, 1922, Serial No. 565,737, reissued January 24, 1928 as Reissue Patent No. 16,860.

Armstrong patent No. 1,367,292. Application filed July 12, 1919, granted February 1, 1921, expires February 1, 1938; application for reissue filed June 9, 1922, Serial No. 567,205, reissued May 22, 1928 as Reissue Patent No. 16,969.

Utzman patent No. 1,455,127. Application filed June 14, 1922, granted May 15, 1923, expires May 15, 1940.

Utzman patent No. 1,492,588. Application filed June 14, 1922, granted May 6, 1924, expires May 6, 1941.

Williams patent No. 1,519,180. Application filed August 18, 1922, granted December 16, 1924, expires December 16, 1941.

Armstrong patent No. 1,556,575. Application filed October 1, 1921, granted October 13, 1925, expires October 13, 1942.

Armstrong patent No. 1,399,455. Application filed February 24, 1920, granted December 6, 1921, expires December 6, 1938.

9411 Tyler patent No. 1,417,117. Application filed November 15, 1919, granted May 23, 1922, expires May 23, 1939.

Birdsey patent No. 1,643,801. Application Serial No. 437,062, filed January 13, 1921, granted September 27, 1927, expires September 27, 1944.

Birdsey patent No. 1,650,930. Application Serial No. 506,676, filed October 10, 1921, granted November 29, 1927, expires November 29, 1944.

Birdsey patent No. 1,676,318. Application Serial No. 545,231, filed March 20, 1922, granted July 10, 1928, expires July 10, 1945.

Birdsey patent No. 1,710,915. Application Serial No. 555,627, filed April 19, 1922, granted April 30, 1929, expires April 30, 1946.

Smith patent No. 1,603,158. Application Serial No. 662,359, filed September 12, 1923, granted October 12, 1926, expires October 12, 1943.

Birdsey patent No. 1,666,161. Application Serial No. 737,237, filed September 12, 1924, granted April 17, 1928, expires April 17, 1945.

Utzman patent No. 1,631,108. Application Serial No. 750,224, filed November 17, 1924, granted May 31, 1927, expires May 31, 1944.

Brookby & Absmeier patent No. 1,689,322. Application Serial No. 91,297, filed March 1, 1926, granted October 30, 1928, expires Oct. 30, 1945.

Armstrong patent No. 1,701,291. Application Serial No. 310,470, filed July 12, 1919, granted February 5, 1929, expires February 5, 1946.

Utzman patent No. 1,638,280. Application Serial No. 374,833, filed April 19, 1920, granted August 9, 1927, expires August 9, 1944.

Armstrong patent No. 1,641,611. Application Serial No. 377,421, filed April 29, 1920, granted September 6, 1927, expires September 6, 1944.

Speer patent No. 1,686,671. Application Serial No. 427,044, filed November 29, 1920, granted October 9, 1928, expires October 9, 1945.

Speer patent No. 1,641,648. Application Serial No. 427,045, filed November 29, 1920, granted September 6, 1927, expires September 6, 1944.

Mehlhope patent No. 1,604,707. Application Serial No. 473,288, filed May 28, 1921, granted October 26, 1926, expires October 26, 1943.

9412 Gustafson patent No. 1,665,168. Application Serial No. 509,366, filed December 2, 1919, renewed October 21, 1921, granted April 3, 1928, expires April 3, 1945.

Kohler, et al patent No. 1,673,944. Application Serial No. 540,412, filed March 2, 1922, granted June 19, 1928, expires June 19, 1945.

Utzman patent No. 1,703,183. Application Serial No. 581,362, filed August 12, 1922, granted February 26, 1929, expires February 26, 1946.

Birdsey Patent No. 1,718,890. Application Serial No. 583,795, filed August 23, 1922, granted June 25, 1929, expires June 25, 1946.

Utzman application Serial No. 477,371, filed June 14, 1921, finally allowed April 26, 1929. Patent No. 1,731,116 will issue October 8, 1929.

Knode application Serial No. 590,358. Filed September 25, 1922.

Utzman application Serial No. 581,361. Filed August 12, 1922.

Williams application Serial No. 582,606. Filed August 18, 1922.

Roos application Serial No. 733,197, filed August 20, 1924.

Bayer application Serial No. 661,723, filed September 8, 1923.

Roos application Serial No. 3,477, filed January 19, 1925.

Roos application Serial No. 142,155, filed October 16, 1926.

Haggerty patent No. 1,500,452. Application Serial No. 565,433, filed June 2, 1922, granted July 8, 1924.

Hite patent No. 1,230,297. Application Serial No. 115,649, filed August 16, 1916, granted June 19, 1917.

9413 *Government's Exhibit No. 10*

LICENSE AGREEMENT

This Agreement, executed in duplicate this 15th day of October, 1929, by and between the United States Gypsum Company, an Illinois corporation, of Chicago, Illinois, hereinafter referred to as Licensor, and Certain-Teed Products Corporation, a Maryland corporation, having its principal office at New York, New York, hereinafter referred to as Licensee, witnesseth:

Whereas, Licensor is the owner of certain letters patent and applications for letters patent of the United States covering an improved gypsum wallboard and method or process of making the same, together with machines and appliances for the manufacture of such inventions, which with certain other patents are more specifically set forth in Exhibit A attached hereto and made a part hereof; and

Whereas, Licensor was the owner of all of the right, title and interest in and under letters patent of the United States, number 1,029,328 and number 1,034,746, known as the Utzman patents, the last of which expired August 6, 1929, which said Utzman Patents were adjudicated by the United States District Court for the Northern District of Illinois, Eastern Division, and by the United States Circuit Court of Appeals for the Seventh Circuit, and were decreed by said courts as valid and having been infringed by the defendants named in said suits; and

Whereas, Birdsey Patent number 1,358,508, mentioned in said Exhibit A, was adjudicated by the United States District Court for the Northern District of Ohio, and said court decreed that said Birdsey Patent was valid and infringed by the defendant in said cause by reason of its having made, used and sold plasterboard and/or
9414 gypsum wall board with edges of the character disclosed in said patent and said District Court ordered a perpetual injunction and accounting against defendant, which cause is now pending on appeal before the United States Circuit Court of Appeals for the Sixth Circuit; and

Whereas, the Beaver Products Company, Inc., formerly infringed said Utzman Patents and subsequent thereto agreed to settle the claim which Licensor had against it for damages by taking a license from Licensor under said patents, and agreeing to pay in settlement of said claim and for said license a sum equivalent to five (5) per cent of said Licensee's selling price of all plasterboard or gypsum wallboard manufactured and sold by it from the date of said license until August 6, 1929, and one and one-half (1½%) per cent of such selling price from August 6, 1929, to February 10, 1937; and

Whereas, on April 1, 1928, Licensee acquired substantially all of the plants, property and assets of the Beaver Products Company, Inc., and assumed all of its general obligations, and thereafter the said Beaver Products Company, Inc., ceased to do any business and failed to make any further payments under said license, and Licensor asserted a claim against Licensee for a sum equivalent to five per cent (5%) of Licensee's selling price of all plasterboard and gypsum wallboard of every kind manufactured at plants formerly owned by the Beaver Products Company, Inc. and sold by Licensee subsequent to April 1, 1928, and Licensee recognized such claim and agreed to pay the same, and it was agreed between Licensor and Licensee that the former would grant a license to the latter under said patents and settle said claim in consideration of the payment to Licensor of five per cent (5%) of Licensee's selling price of all plasterboard and gypsum wallboard manufactured and sold by it between May 22, 1929, the date of said agreement, and August 6, 1929, and one and one-half per cent (1½%) of such selling price from August 6, 1929, to February 10, 1937, plus three and
9415 one-half per cent (3½%) of such selling price from August 6, 1929, until said three and one-half per cent (3½%) of such selling price aggregated the fixed sum of Sixty Four Thousand Four Hundred Sixty Seven Dollars and Twelve Cents ($64,467.12); and

Whereas, Licensor is the owner of that certain application for United States letters patent filed by Carlisle K. Roos, entitled "Cementitious Material," now pending in the United States Patent Office and covering the process of making a cellular product, which comprises forming a tenacious foam and mixing the foam with a cementitious material, and of certain other applications filed by said

Roos covering specific employment of said invention, and Licensor has heretofore acquired the sole and exclusive rights in the United States of America (when gypsum is used as the main binding material) in that certain application for United States letters patent described in said Exhibit A filed by Erik Christian Bayer, entitled "Methods of Manufacturing Porous Building Materials," and relating to a process broadly similar to that of said first mentioned Roos application, which said Roos and Bayer applications are described and set forth in said Exhibit A; and

Whereas, Licensor has agreed to purchase that certain Haggerty patent number 1,500,452 dated July 8, 1924, and that certain Hite patent number 1,230,297 dated June 19, 1917, subject to approval of the United States District Court for the Northern District of Illinois, Eastern Division thereof, and other United States District Courts in receivership proceedings therein pending against the present owner of said patents, both of which said patents are set forth in said Exhibit A; and

Whereas, Licensee desires to include in its manufacture the inventions and improvements set forth and claimed in the Haggerty and Hite patents and the Roos and Bayer applications referred to in said Exhibit A, and to
9416 obtain a license from Licensor to make, use and sell the inventions and improvements set forth and claimed in all of said patents and applications for letters patent throughout the full term thereof, and Licensor has agreed to grant such a license to Licensee upon the terms and conditions hereinafter stated;

Now, therefore, in consideration of the sum of One Dollar and other good and valuable considerations, the receipt whereof is hereby acknowledged from each party to the other party, and in consideration of the mutual covenants and agreements hereinafter contained, the parties hereto do hereby agree as follows, to-wit:

1. Licensor agrees promptly to disclose to Licensee all information and formulae which it now has or may obtain relating to the process of making a cellular product through the formation of a tenacious foam and mixing the foam with a cementitous material, as set forth and claimed in said applications for letters patent filed by Carlisle K. Roos and Erik Christian Bayer, in so far as the same is or

may be applied to gypsum, and including all information and formulae for the manufacture of gypsum plasterboard and gypsum wallboard embodying the inventions and improvements set forth and claimed in said Roos and Bayer applications, together with a description of the machines or appliances which it now has for making the same. It will assist Licensee to make its plant ready for practicing said process in the manufacture of plasterboard and gypsum wallboard by furnishing without cost to Licensee the advice and instruction of Licensor's experts and information with respect to the purchase and cost of said machines and appliances.

2. Licensor has agreed to and does hereby give and grant unto Licensee an indivisible and non-exclusive right, license and privilege of using the process or processes and making and using the machines and/or inventions set forth and claimed in any and all of said patents and/or applications for letters patent set forth in Exhibit A attached hereto in the manufacture of gypsum plas-
9417 terboard and/or gypsum wallboard at the plants or factories now owned and/or operated by Licensee, or at any other plant or factory hereafter owned and/or operated or controlled by it or any subsidiary, associated or affiliated company, and of manufacturing at any such place or places, selling and using in the United States of America and the territories and possessions thereof gypsum plasterboard or gypsum wallboard manufactured at any such place or places and embodying the inventions and improvements set forth and claimed in said patents and/or applications for letters patent described in said Exhibit A, for the full term of said letters patent or of any letters patent which may be granted for or upon any of said applications, including any extensions and/or reissues thereof.

It is expressly understood and agreed that the indivisible and non-exclusive right, license and privilege aforesaid is granted upon condition that the Licensor shall have and it hereby reserves the right to determine and fix at any time and to change from time to time during the existence of said patents and so long as said license shall continue, the minimum price or prices at which Licensee shall sell any plasterboard or gypsum wallboard manufactured by Licensee by use of any of the machines or appliances covered by any of said letters patent and which shall embody the inventions and improvements set forth

and claimed in any of said patents which are presently issued, or any of said plasterboard or gypsum wallboard manufactured by second parties and which shall embody the inventions and improvements set forth and claimed in either patent number 1,500,452 or patent number 1,230,297, or commencing with the date when a patent shall have been granted or issued for or upon any of the said Roos or Bayer inventions and/or applications any of said plasterboard or gypsum wallboard manufactured by Licensee, the body or core of which is made according to the process set forth and claimed in any patent granted for or upon any of said Roos or Bayer inventions and/or applications, and in case Licensor shall exercise the right so reserved, it shall first serve written notice of its intention so to do upon Licensee, accompanied with a statement of the minimum price or prices at which Licensee shall sell said gypsum plasterboard or gypsum wallboard, and thereafter shall give to Licensee written or telegraphic notice of any change in such price or prices, and Licensee expressly covenants and agrees that it will not, so long as this agreement shall continue in force and effect and after receipt of such notice given in accordance with the terms and conditions hereof, directly or indirectly, sell or offer for sale any gypsum plasterboard or gypsum wallboard manufactured by it by use of any of the machines or appliances covered by any of said patents and which during the existence thereof shall embody the inventions and improvements set forth and claimed in any of said patents which are presently issued, or any gypsum plasterboard or gypsum wallboard manufactured by second parties and which during the existence thereof shall embody the inventions and improvements set forth and claimed in either patent number 1,500,452 or patent number 1,230,297, or any gypsum plasterboard or gypsum wallboard manufactured by Licensee after a patent shall have been issued upon any of the said Roos or Bayer inventions and/or applications and during the existence thereof, the body or core of which is made according to the process set forth and claimed in any patent granted for or upon any of said inventions and/or applications, at a price or prices less than that stated by Licensor in said notice or in any such written or telegraphic notice of a change in such price or prices.

9418

Said minimum price shall not be more than that price at which Licensor determines to sell plasterboard or gypsum

wallboard embodying the inventions and improvements set forth and claimed in said patents to its own like trade in the same market.

9419 3. Licensee agrees to pay to Licensor in settlement and discharge of said claim and for said disclosures, information and assistance and the agreements of Licensor herein contained, and for the right, license and privilege of using the processes and making and using the machines and/or inventions in the manufacture of plasterboard and gypsum wallboard covered by said patents and applications for letters patent described in said Exhibit A, and for the privilege of manufacturing, using and/or selling plasterboard and gypsum wallboard embodying the inventions and improvements set forth and claimed in said patents and applications for letters patent, an amount (hereinafter for convenience referred to as a license fee or royalty) equivalent to three and one-half per cent (3½%) of the selling price of Licensee of all plasterboard and gypsum wallboard of every kind, whether or not made by the use of said machines and/or embodying the inventions and improvements set forth and claimed in said letters patent or applications for letters patent, manufactured and sold by Licensee between the date hereof and February 10, 1937, the date of the expiration of patent number 1,330,413 mentioned in said Exhibit A, and thereafter an amount equivalent to two per cent (2%) of the selling price of Licensee of all such plasterboard and gypsum wallboard manufactured and sold by it between February 10, 1937, and July 8, 1941, the date of the expiration of said patent number 1,500,452, and thereafter an amount equivalent to one per cent (1%) of the selling price of Licensee of all such plasterboard and gypsum wallboard manufactured and sold by it between July 8, 1941, and the date of the expiration of the last to expire of any patent granted or issued for or upon any of the said Roos or Bayer applications; Provided, However, that if no patent shall have been granted or issued for or upon any
9420 of said Roos or Bayer applications covering said process referred to in paragraph 1 hereof, within two (2) years from the date hereof, then commencing with the end of said two (2) year period the said license fees or royalties agreed to be paid by Licensee shall be reduced by one per cent (1%) of Licensee's said selling price until such patent shall have been granted or issued for or upon any of said Roos and Bayer applications, at which time

Licensee shall again commence to pay the full amount of said license fees or royalties until the date of the expiration of the last to expire of any such patent or patents. If at the time of the execution of this contract Licensee's plant shall not be equipped to practice the process set forth and claimed in said Roos or Bayer applications in the manufacture of plasterboard or gypsum wallboard, then Licensee shall pay as such license fees or royalties two and one-half per cent (2½%) of said selling price between the date hereof and January 1, 1930, or such earlier date as Licensee shall make its plant ready to practice said process in the manufacture of said board, and the payment of three and one-half per cent (3½%) of said selling price and said period of two (2) years in this paragraph mentioned shall commence on January 1, 1930, or such earlier date as Licensee shall have made its plant ready as aforesaid. The amount of one per cent (1%) of said selling price included in said royalties or license fees is the amount agreed to be paid by Licensee for the use of said Haggerty and Hite patents.

Licensee's selling price shall mean the delivered selling price of Licensee, less freight paid by the customer and less regular cash discounts allowed by Licensee.

In addition to the amounts hereinabove agreed to be paid by Licensee, Licensee, in further consideration of said license and in settlement of said claim, shall
9421 pay to Licensor an amount equivalent to one and one-half per cent (1½%) of the selling price of Licensee of all such plasterboard and/or gypsum wallboard manufactured and sold by it after the date hereof and until said one and one-half per cent (1½%) of said selling price shall have aggregated $60,200.29, being the full amount of said fixed sum which is unpaid up to the date hereof. It is understood and agreed that if prior to the expiration of the license granted in paragraph 2 hereof Licensee shall not have paid to Licensor said additional sum of $60,200.29 over and above said other license fees or royalties, then from the date of the expiration of said license, Licensee shall pay to Licensor five per cent (5%) of the selling price of Licensee of all plasterboard and/or gypsum wallboard manufactured and sold by it until said sum of $60,200.29 shall have been fully paid.

It is expressly understood and agreed that this contract is executed without prejudice to Licensor to assert its said claim against Licensee in case for any reason this agreement shall not remain in force until February 10, 1937, and

Licensee shall not pay to Licensor up to said date one and one-half per cent (1½%) of its said selling price over and above said two per cent (2%) of its said selling price paid for the right to use the said Haggerty and Hite inventions and the process set forth and claimed in said Roos and Bayer applications, plus said additional one and one-half per cent (1½%) of said selling price until the full amount of said fixed sum shall have been paid, and it is further agreed that the said claim of Licensor against Licensee is not settled or discharged by the execution of this instrument but shall only be settled and discharged by the payment by Licensee to Licensor of said one and
9422 one-half per cent (1½%) of its said selling price up to February 10, 1937, over and above said two per cent (2%) of its said selling price, plus the full amount of said sum of $60,200.29, in the manner and upon the payments as hereinabove set forth. In case of the termination of this contract at any time prior to the expiration thereof, or in the event of the failure of Licensee to make full payment to Licensor of all of said amounts in this paragraph mentioned, Licensor shall have, in addition to all its other rights under this agreement, the right to recover of and from Licensee the full amount of said sum of $60,200.29, which said sum Licensee forever recognizes and admits and agrees to pay, less only such sums as shall have been paid by Licensee to Licensor since the date hereof on account of said additional one and one-half per cent (1½%) of said selling price as hereinabove provided. Upon the payment to Licensor of said one and one-half per cent (1½%) of said selling price up to February 10, 1937, over and above said two per cent (2%) of said selling price, plus the full payment of said sum of $60,200.29, in the manner and upon the payments as hereinabove set forth, then the said claim of Licensor against Licensee shall thereupon be and become fully settled, discharged and satisfied.

4. It is further agreed that so long as the license provided for in paragraph 2 hereof shall remain in force between the parties hereto, or in case the license granted under paragraph 2 hereof shall expire before the expiration of the patents specifically described in this paragraph, and the said license granted under paragraph 2 shall continue in force between the parties hereto for the full term of the last to expire of any of said patents described in said Exhibit A, or of any patent or patents granted
9423 for or upon any application described in said Exhibit A, then until the expiration of the patents spe-

cifically described in this paragraph, Licensor does hereby give and grant unto Licensee an indivisible and non-exclusive right, license and privilege of making and using the inventions set forth and claimed in those certain patents known as the Birdsey Plasterboard Bundle Patent number 1,696,877, dated December 25, 1928, Utzman Patent number 1,724,740, dated August 13, 1929, Birdsey Patent number 1,730,113 dated October 1, 1929, and applications for letters patent serial numbers 329,581 filed December 31, 1928, and 296,354 filed July 30, 1928, and any patents which may be granted for or upon said applications, including any extensions and/or reissues thereof, at the plants or factories now owned or operated by Licensee or at any other plant or factory hereafter owned and/or operated and controlled by Licensee or any subsidiary, associated or affiliated company of Licensee, and of selling or using bundles of plasterboard and/or gypsum wallboard put up or bundled by Licensee at any such place or places according to the claims set forth and claimed in the said patents and applications for letters patent in this paragraph described, upon the terms and conditions hereinafter stated.

Licensee agrees to pay to Licensor for the right, license and privilege of making, using or selling the inventions set forth and claimed in said patents and applications in the next preceding paragraph described, in addition to the sums hereinabove set forth, an amount (hereinafter referred to as a license fee or royalty) equivalent to ten cents (10¢) per one thousand (1,000) square feet of plasterboard and/or gypsum wallboard which is sold by Licensee in bundles of any kind, whether or not the bundles shall be made according to the claims set forth and claimed in said patents, which said license fee or royalty shall be payable at the times and in accordance with the terms of paragraph 6 hereof. The term "bundle" shall not include unbundled material wired or strapped for purpose of transportation or unbundled material shipped for export or coastwise trade in fiber, wooden or other crates.

5. It is expressly understood and agreed that the
9424 license herein granted shall be personal to the Licensee, and that the same or any right herein or thereunder shall not be sold or assigned or transferred without the written consent of Licensor, or transferred by operation of law; Provided, However, that the same may be assigned by Licensee to any company acquiring all the

assets and business or capital stock of Licensee, on condition that Licensee shall first obtain an agreement in writing from any such assignee agreeing to assume all of the obligations of Licensee under this agreement and to be bound by all of the terms and conditions hereof and shall deliver such agreement to Licensor. Licensee agrees not to sell all of its assets and business or capital stock, or to transfer and convey its plasterboard and/or wallboard business or its assets used in connection therewith, without requiring the purchaser or purchasers thereof to assume, in writing, all of the obligations of Licensee hereunder, and to agree to be bound by the terms and conditions hereof, and deliver such agreement to Licensor.

It is expressly understood that the Licensee shall not discontinue its business of manufacturing and selling plasterboard and/or gypsum wallboard until the Licensor shall have received the full payment of said one and one-half per cent (1½%) of said selling price up to February 10, 1937, over and above said two per cent (2%) of said selling price, plus the full payment of said sum of $60,200.29, in the manner and upon the payments as hereinabove set forth.

6. Licensee agrees to keep separate full and accurate books of account and records showing the exact quantity of all plasterboard and gypsum wallboard manufactured and sold by it, as well as a separate record of all plasterboard and/or gypsum wallboard sold by it in bundles, and agrees that on or before the twentieth day of each calendar month it will render unto Licensor true written
9425 returns verified under oath by an officer or other agent of Licensee, setting forth the quantity of all plasterboard and/or gypsum wallboard manufactured and sold by it during the preceding calendar month and the quantity thereof put up and sold by it in bundles, together with the price or prices at which the same was sold and is to be accounted for hereunder, such written returns to be delivered to Licensor at its office in Chicago, Illinois, and Licensee agrees to pay to Licensor on or before the 20th day of each calendar month at the office of Licensor at Chicago, Illinois, the hereinbefore stipulated royalties or license fees which may then be due under this agreement on account of all said plasterboard and/or gypsum wallboard manufactured and sold by it and put up and sold by it in bundles during the next preceding calendar month.

7. Licensor, or its duly authorized representative, shall have the right at all reasonable times during business hours to inspect the books of account and records of Licensee referred to in the next preceding paragraph hereof, including all records of every kind showing the quantity of said plasterboard and gypsum wallboard manufactured and sold by it and the quantity thereof put up and sold by it in bundles and the price or prices at which the same was sold, and to make copies thereof and memoranda therefrom; Provided, However, that if at the time of any such examination Licensee shall request it in writing, then such examination shall be made by a certified public accountant agreed upon between the parties hereto, in which event the expense thereof shall be borne equally by both parties. If the parties at any such time shall not agree upon the certified public accountant to make such examination, then Licensor shall name three certified public accountants of good standing not directly or indirectly employed by it or in any other way connected with it, and if Licensee
9426 shall not accept any one of them, then Licensor shall have the right to make such examination itself.

8. Licensee agrees that all plasterboard or gypsum wallboard manufactured and sold by it embodying the claims of any of said patents and/or applications for letters patent shall be distinctly marked with the word "Patented" and/or "Patent Applied For," as the case may be, together with the numbers of any of said patents or applications specified by Licensor, the claims of which may be embodied in said plasterboard or gypsum wallboard, and in connection with said marking Licensee will further mark said board with the words "Licensed Under the Above Letters Patent" and/or "Licensed Under Pending Applications for Letters Patent," as the case may be, which marking shall be plainly visible. Licensee further agrees that all bundles put up and sold by it embodying the claims of any of said patents numbers 1,696,877, 1,724,740 and 1,730,113 and/or any of said applications serial numbers 329,581 and 296,354 shall be similarly marked together with the numbers of said bundle patents and/or applications.

9. Having regard for the fact that there are or may be certain manufacturers of plasters or gypsum products, jobbers or other wholesale distributors of such products, who do not or may not manufacture gypsum wallboard or plasterboard but who desire or may desire to have gypsum

wallboard or plasterboard manufactured for them, it is understood and agreed that Licensee may manufacture for jobbers (being those who do not manufacture but buy and sell plasterboard or gypsum wallboard in straight cars or in mixed cars with other building material and who do not sell at retail) gypsum wallboard or plasterboard embodying the inventions and improvements set forth and claimed in said letters patent or in any letters patent
9427 after the same shall have been issued, granted for or upon any of the said applications and may with the written consent of first party manufacture for any such other manufacturer or other wholesale distributor, gypsum wallboard or plasterboard embodying the said inventions and improvements; Provided, However, that the said license fee or royalty to be paid to Licensor as hereinbefore provided shall be based upon all gypsum wallboard and plasterboard manufactured for and sold and invoiced to such other manufacturer, jobber or wholesale distributor and upon the regular selling price of Licensee of such plasterboard or gypsum wallboard to its regular dealer trade at the time of such sale and invoice, and shall not be based upon the price at which plasterboard or gypsum wallboard is sold and invoiced by Licensee to such other manufacturer, jobber or wholesale distributor. Nothing hereinbefore contained in this agreement shall be construed to give Licensee the right to manufacture gypsum plasterboard or gypsum wallboard embodying the inventions and improvements set forth and claimed in any of said letters patent or in any letters patent after the same shall have been granted for or upon any of said applications for said other manufacturers or wholesale distributors and to sell the same, without the written consent of Licensor.

10. Licensee covenants and agrees that all of said gypsum plasterboard and gypsum wallboard manufactured and sold by it embodying the inventions and improvements set forth and claimed in any of said letters patent or patents issued upon any of said applications and commonly known in the trade as "Seconds" shall be plainly invoiced as "Seconds" and shall be plainly marked with a visible red stamp or label firmly fixed on each of said boards showing the word "Seconds" in letters at least three inches
9428 in height.

11. As one of the considerations for the indivisible and non-exclusive license herein and hereby grant-

ed, Licensee hereby acknowledges the validity of said letters patent or of any letters patent which may be granted or issued for or upon said applications, forming the subject-matter of said license so long as said license shall remain in full force and effect, and agrees that it will not at any time during the existence of said license, directly or indirectly, by itself, through or together with another or others, contest the validity of either or any of said letters patent or the title thereto of Licensor.

12. In the event that either party shall at any time neglect, fail or refuse to keep or perform any of the conditions or agreements herein to be kept by it and performed, then the other party, at its election, may serve upon the party in default written notice of intention to terminate this license, which notice shall specify the alleged neglect, failure or refusal, and if within thirty (30) days from the date of delivery of said notice the party in default shall not cure the default specified in said notice, then the other party may cancel and terminate this agreement by notifying the party in default in writing of its election so to do, without the necessity of any court action; Provided, However, that neither party shall be relieved thereby from any liability accrued at the time of such termination; and Provided Further, that if the party upon whom said notice is served shall deny that it is in default in whole or in part, as specified therein, then the party serving such notice shall not be privileged to cancel this contract an account of the alleged default specified therein, provided the party upon whom said notice shall have been served shall
9429 within said thirty (30) day period perform the agreements and submit the question to arbitration, as in this paragraph hereinafter set forth. In case of any such denial the party upon whom the notice shall have been served shall within said thirty (30) day period state in writing to the other party wherein and in what respect it denies the default specified in said notice and shall at the same time make good any default specified therein which it does not deny and appoint in writing one person as arbifer to arbitrate the question of whether or not it is in default in respect to that which it shall have denied as aforesaid, it being understood, however, that if the question shall be with respect to the amount of royalties or license fees to be paid hereunder, then the Licensee shall first pay or offer to pay the amount of such license fees or royalties which it then admits is due and payable in accordance with the terms hereof, and the acceptance thereof by the

Licensor shall not operate as a waiver of any of its rights hereunder or of any claim it may have made in any notice served by it upon Licensee. The party so serving said notice shall, after the other party shall have made good any default specified in said notice which it did not deny in writing as aforesaid, including the payment of royalties or license fees, if any, admitted by it to be due and payable hereunder, and within ten (10) days from the date of the appointment of said first arbiter in accordance with the terms hereof, appoint in writing another person as arbiter, and the two persons so appointed shall within ten (10) days or as soon as possible thereafter appoint in writing a third person as arbiter. The three persons so appointed shall, within thirty (30) days from the date of the appointment of said last mentioned arbiter, or as soon as possible thereafter, decide whether or not the party upon
9430 whom said notice has been served is in default hereunder with respect to anything contained in said notice. The decision of a majority of the three arbiters so appointed shall constitute a final settlement of the said question and be binding and conclusive upon both the Licensor and the Licensee, and if it shall have been determined by a majority of the said arbiters that the party upon whom said notice was served is in default with respect to anything contained in said notice and the party so found to have been in default shall fail or refuse to comply with the terms of the award or finding made by said arbiters within thirty (30) days from the date such award or finding shall have been made, the party serving said notice may at its election terminate and cancel this agreement in writing. In the event of default hereunder by either party and notice of such default is served by the other party as herein provided, and after service of such notice the party in default shall cure the same as hereinbefore provided the same shall constitute a nullification of said notice to the same effect as if said notice had not been served. In case at any time the Licensee shall be adjudged a bankrupt, then the license hereunder shall immediately be and become canceled and terminated, but the Licensor shall not thereby be prevented from collecting all license fees or royalties accrued hereunder at the time of such termination. The waiver of any breach by either party shall not be interpreted as constituting a waiver of any further breach or breaches. Either party may proceed by action to specifically enforce this contract or any of the terms, conditions and covenants thereof by injunction or in such other manner as may be provided by law.

13. Any notice to be given under the terms hereof may be served by the Licensor or the Licensee by mailing the same to the other party hereto, postage prepaid and registered, addressed to any of its officers at its last
9431 known principal office, and the deposit of any such notice in the United States mails, postage prepaid and so addressed, shall constitute service of notice hereunder. Any telegraphic notice given under paragraph 2 hereof shall be confirmed in writing in the ordinary course of business.

14. It is understood and agreed that if at any time during the term hereof the Licensee shall, in the judgment of the Licensor, suffer substantial detriment by reason of any infringement on the part of any person or persons of any of said letters patent or of any patent that may be granted upon said applications, under which this license is granted, the Licensor will afford the Licensee such reasonable protection as in the judgment of the Licensor shall be necessary or proper.

If a court of last resort upon final appeal or review shall decree all the claims of the patents granted for or upon said Roos and Bayer applications invalid or Licensee shall be permanently enjoined from manufacturing plasterboard and gypsum wallboard, the body or core of which is made according to the process set forth and claimed in said Roos and Bayer applications in such manner that they cannot practice in any way any of the inventions set forth in the said applications, and such injunction shall be made final by a court of last resort upon final appeal or review, then from the time the court of last resort upon final appeal or review shall decree that all the claims of the patents granted or issued for or upon said Roos and Bayer applications are invalid, or make such injunction permanent and final, the license fees or royalties to be paid by Licensee hereunder shall be reduced by one per cent (1%) of said selling price, or if a court of last resort upon final appeal or review shall decree that all the claims of said Hag-
9432 gerty and Hite patents are invalid or Licensee shall be permanently enjoined from manufacturing plasterboard and gypsum wallboard embodying the inventions and improvements set forth and claimed in said Haggerty and Hite patents in such manner that they cannot practice in any way any of the inventions set forth in said patents, and such injunction shall be made final by a court of last resort upon final appeal or review, then from the time the

court of last resort upon final appeal or review shall decree all claims of said Haggerty and Hite patents invalid or make said injunction permanent and final, the said license fees or royalties agreed to be paid by Licensee for said Haggerty and Hite patents shall cease and determine.

15. In case Licensor shall, subsequent to the effective date hereof, grant to any other person except Abel Davis and Eugene Holland, receivers of the Universal Gypsum & Lime Co. or their successors or to the said Universal Gypsum & Lime Co., any license under said patents or applications for letters patent set forth in said Exhibit A and paragraph 4 hereof for the manufacture, sale or use of gypsum plasterboard or gypsum wallboard or bundles thereof, embodying the claims or inventions set forth and claimed in said patents or applications, or shall grant any right under any such license, upon terms more favorable than those granted hereunder to this Licensee, then it will grant to this Licensee a license on the same terms or extend to it the same right granted to any such other person. This paragraph shall not apply to any license granted on or prior to the effective date hereof, nor shall the same apply to the terms of settlement of any claim of Licensor or provisions with respect to the payment thereof, contained in any such license.

16. The terms "gypsum plasterboard," "gypsum
9433 wallboard" and "plasterboard" shall be understood to mean all board made of gypsum, by whatever name called, having the characteristics of gypsum plasterboard or gypsum wallboard, irrespective of the purpose for which the same may be sold or used, and shall include gypsum laths and all other gypsum boards.

17. If at any time after the expiration of two (2) years from January 1, 1930, or such earlier date that Licensee shall make its plant ready to practice the process set forth and claimed in said Roos and Bayer applications in the manufacture of gypsum wallboard or plasterboard, there shall have been invented or come into use any process which shall make the said process of forming a cellular product as set forth and claimed in said Roos and Bayer applications obsolete or shall displace the same, and the Licensor shall in its own manufacture permanently and wholly abandon the use of the subject-matter of the claims of said Roos and Bayer applications, it shall notify Licensee in writing thereof, and Licensee may then, upon thirty (30) days' written notice to Licensor, cancel and terminate this license in so far as the same applies to said

Roos and Bayer applications or to the patent or patents granted or issued therefor or thereupon, and from the date of such cancellation the royalties or license fees to be paid by Licensee hereunder shall be reduced by one per cent (1%) of its said selling price; Provided, However, that if Licensor shall not in such event permanently and wholly abandon the use of said process but shall only partially abandon the same, then to the extent or degree and for the term that Licensor shall abandon the same in its own manufacture Licensee shall be relieved from the payment of license fees or royalties to the same extent, that is to say, if Licensor shall in such event manufacture and sell any board the core of which is made of gypsum of
9434 a particular size, kind or make, or for a particular purpose or use, without the use of said process embodied therein, then if Licensee shall manufacture and sell the same board of the same particular size, kind or make and for the same purpose or use, without the use of said process embodied therein, then Licensee shall not be required to pay royalties or license fees upon such particular board for the term that Licensor shall manufacture and sell the same. "License fees" and "royalties" for the purpose of this paragraph shall mean one per cent (1%) of said selling price. The use by Licensor of any improvement which Licensee has the right to use as set forth in paragraph 18 hereof, or the manufacture of plasterboard or gypsum wallboard without the use of said process for sale only in foreign countries where Licensor has no patented rights in said process, shall not constitute an abandonment of said process or a partial abandonment thereof within the meaning of this paragraph.

18. If Licensor shall at any time during the existence of this agreement make or obtain any improvement for the formation of the bubble described in the process set forth in said Roos and Bayer applications and/or method of its introduction in the core of plasterboard or gypsum wallboard, and which improvement is covered by the claims of said Roos and Bayer applications, and shall itself use the same in its own manufacture, then so long as Licensee shall continue to pay the license fees or royalties hereinbefore stipulated the right, license or privilege herein contained shall be extended to and include the use of said improvement in the manufacture by Licensee of gypsum plasterboard or gypsum wallboard, subject to all of the terms and conditions herein contained, except only that Licensee shall not be required to pay any additional sum, royalty or

license fee therefor. It is further understood that if a patent or patents shall be granted or issued for or
9435 upon said improvement, then all of the provisions of this agreement, as well as the provision of paragraph 2 hereof reserving the right in Licensor to determine and fix at any time and to change from time to time the minimum price or prices at which Licensee shall sell any gypsum plasterboard or gypsum wallboard manufactured by Licensee and embodying the claims of said patents, shall apply to the improvement set forth and claimed in any patent or patents granted or issued for or upon said improvement. Licensor will promptly notify Licensee of the general adoption by it of any such improvement in its own manufacture, together with such information as it may possess as to the use thereof in the manufacture of plasterboard and gypsum wallboard.

19. Licensee has investigated and fully satisfied itself with respect to the inventions and improvements set forth in said patents and applications for letters patent and the use thereof in its own manufacture, and has executed this agreement without relying upon any representations which may have been made by Licensor with respect thereto. No representations have been made by Licensor not expressly stated in this contract which Licensee shall at any time have any right to rely upon as an inducement for its making this contract or for any result or results to be obtained by Licensee in its own plant by its use of the inventions and improvements set forth and claimed in any of said patents or applications for letters patent.

20. The Licensor agrees at any time during the term hereof to extend to Licensee, upon its written request, an indivisible and non-exclusive license or privilege to use the said process or processes set forth and claimed in said Roos or Bayer applications in the manufacture in its said plants of any other gypsum product not specifically
9436 covered by this agreement and in which Licensor shall use the same in its own manufacture and to sell the same, upon the payment to Licensor of one per cent (1%) of the selling price of Licensee of all of said other gypsum product, whether or not embodying the said process in making the same, manufactured and sold by Licensee and upon the same terms as set forth herein and subject to all of the conditions hereof, in which event in the agreement for the same there shall be substituted for the

words "plasterboard and/or gypsum wallboard" the name of such other product or products. An agreement containing all of said terms and conditions shall be reduced to writing and signed by both parties before the same shall become effective.

21. From the date this contract shall become effective the same shall supersede all prior license agreements at any time made between the parties hereto relating to the subject-matter hereof or relating to any of the patents or applications for letters patent referred to in this agreement; Provided, However, that Licensor shall not be barred or prevented from recovering any claim which may have accrued under any such prior license agreements prior to the time this contract shall become effective, including all payments, royalties or license fees agreed to be paid thereunder by Licensee up to the date this agreement shall go into effect.

22. This license and all of the covenants and agreements hereof shall become effective upon the date Licensor shall receive a conveyance and assignment of said Haggerty and Hite patents to it, pursuant to authority granted by the United States District Court to the receivers of the Universal Gypsum & Lime Co., a Delaware corporation, and to said company, to sell and assign said Haggerty and Hite patents to Licensor, and from the effective date thereof this license and all of the covenants and
9437 agreements hereof shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto, but nothing in this paragraph shall be construed to permit an assignment hereof by Licensee, except as hereinabove specifically provided.

In witness whereof the parties hereto have caused these presents to be signed by their respective presidents, attested by their respective secretaries and their corporate seals to be hereunto affixed in duplicate the day and year first above written.

UNITED STATES GYPSUM COMPANY,
By S. H. AVERY, *Its President.*

ATTEST:
R. G. BEAR,
Secretary.

CERTAIN-TEED PRODUCTS CORPORATION,
By GEO. M. BROWN, *Its President.*

ATTEST:
ROBT. M. NELSON
Secretary.

[SEAL]

9438 EXHIBIT "A"

Utzman patent No. 1,330,413. Application filed September 3, 1918, granted February 10, 1920, expires February 10, 1937.

Birdsey patent No. 1,358,508. Application filed January 2, 1920, granted November 9, 1920, expires November 9, 1937.

Utzman patent No. 1,383,249. Application filed August 13, 1918, granted June 28, 1921, expires June 28, 1938.

Birdsey patent No. 1,383,254. Application filed July 29, 1918, granted June 28, 1921, expires June 28, 1938.

Birdsey patent No. 1,383,255. Application filed January 2, 1920, granted June 28, 1921, expires June 28, 1938.

Birdsey patent No. 1,384,298. Application filed August 19, 1920, granted July 12, 1921, expires July 12, 1938.

Birdsey patent No. 1,395,031. Application filed January 2, 1920, granted October 25, 1921, expires October 25, 1938.

Birdsey patent No. 1,395,032. Application filed January 2, 1920, granted October 25, 1921, expires October 25, 1938.

Birdsey patent No. 1,406,967. Application filed January 3, 1921, granted February 21, 1922, expires February 21, 1939.

Birdsey patent No. 1,427,939. Application filed January 3, 1921, granted September 5, 1922, expires September 5, 1939.

Birdsey patent No. 1,428,624. Application filed January 2, 1920, granted September 12, 1922, expires September 12, 1939.

Brookby patent No. 1,489,693. Application filed September 25, 1922, granted April 8, 1924, expires April 8, 1941.

Birdsey patent No. 1,514,827. Application filed October 6, 1921, granted November 11, 1924, expires November 11, 1941.

Birdsey patent No. 1,515,380. Original application filed January 2, 1920, granted November 11, 1924, expires November 11, 1941.

9439 Birdsey patent No. 1,518,243. Application filed September 22, 1922, granted December 9, 1924, expires December 9, 1941.

Birdsey patent No. 1,525,715. Application filed January 2, 1920, granted February 10, 1925, expires February 10, 1942.

Birdsey patent No. 1,526,307. Application filed October 10, 1921, granted February 10, 1925, expires February 10, 1942.

Utzman patent No. 1,540,045. Application filed March 14, 1923, granted June 2, 1925, expires June 2, 1942.

Birdsey patent No. 1,558,459. Application filed October 4, 1922, granted October 27, 1925, expires October 27, 1942.

Birdsey patent No. 1,561,635. Application filed January 3, 1921, granted November 17, 1925, expires November 17, 1942.

Armstrong patent No. 1,278,821. Application filed January 4, 1918, granted September 17, 1918, expires September 17, 1935.

Armstrong patent No. 1,348,387. Application filed March 15, 1919, granted August 3, 1920, expires August 3, 1937; application for reissue filed June 3, 1922. Serial No. 565,737, reissued January 24, 1928 as Reissue patent No. 16,860.

Armstrong patent No. 1,367,292. Application filed July 12, 1919, granted February 1, 1921, expires February 1, 1938; application for reissue filed June 9, 1922, Serial No. 567,205, reissued May 22, 1928 as Reissue Patent No. 16,969.

Utzman patent No. 1,455,127. Application filed June 14, 1922, granted May 15, 1923, expires May 15, 1940.

Utzman patent No. 1,492,588. Application filed June 14, 1922, granted May 6, 1924, expires May 6, 1941.

Williams patent No. 1,519,180. Application filed August 18, 1922, granted December 16, 1924, expires December 16, 1941.

Armstrong patent No. 1,556,575. Application filed October 1, 1921, granted October 13, 1925, expires October 13, 1942.

Armstrong patent No. 1,399,455. Application filed February 24, 1920, granted December 6, 1921, expires December 6, 1938.

9440 Tyler patent No. 1,417,117. Application filed November 15, 1919, granted May 23, 1922, expires May 23, 1939.

Birdsey patent No. 1,643,801. Application Serial No. 437,062, filed January 13, 1921, granted September 27, 1927, expires September 27, 1944.

Birdsey patent No. 1,650,930. Application Serial No. 506,676, filed October 10, 1921, granted November 29, 1927, expires November 29, 1944.

Birdsey patent No. 1,676,318. Application Serial No. 545,231, filed March 20, 1922, granted July 10, 1928, expires July 10, 1945.

Birdsey patent No. 1,710,915. Application Serial No. 555,627, filed April 19, 1922, granted April 30, 1929, expires April 30, 1946.

Smith patent No. 1,603,158. Application Serial No. 662,359, filed September 12, 1923, granted October 12, 1926, expires October 12, 1943.

Birdsey patent No. 1,666,161. Application Serial No. 737,237, filed September 12, 1924, granted April 17, 1928, expires April 17, 1945.

Utzman patent No. 1,631,108. Application Serial No. 750,224, filed November 17, 1924, granted May 31, 1927, expires May 31, 1944.

Brookby & Absmeier patent No. 1,689,322. Application Serial No. 91,297, filed March 1, 1926, granted October 30, 1928, expires October 30, 1945.

Armstrong patent No. 1,701,291. Application Serial No. 310,470, filed July 12, 1919, granted February 5, 1929, expires February 5, 1946.

Utzman patent No. 1,638,280. Application Serial No. 374,833, filed April 19, 1920, granted August 9, 1927, expires August 9, 1944.

Armstrong patent No. 1,641,611. Application Serial No. 377,421, filed April 29, 1920, granted September 6, 1927, expires September 6, 1944.

Speer patent No. 1,686,671. Application Serial No. 427,044; filed November 29, 1920, granted October 9, 1928, expires October 9, 1945.

Speer patent No. 1,641,648. Application Serial No. 427,045, filed November 29, 1920, granted September 6, 1927, expires September 6, 1944.

Mehlhope patent No. 1,604,707. Application Serial No. 473,288, filed May 28, 1921, granted October 26, 1926, expires October 26, 1943.

9441 Gustafson patent No. 1,665,168. Application Serial No. 509,366, filed December 2, 1919, renewed October 21, 1931, granted April 3, 1928, expires April 3, 1945.

Kohler, et al patent No. 1,673,944. Application Serial No. 540,412, filed March 2, 1922, granted June 19, 1928, expires June 19, 1945.

Utzman patent No. 1,703,183. Application Serial No. 581,362, filed August 12, 1922, granted February 26, 1929, expires February 26, 1946.

Birdsey patent No. 1,718,890. Application Serial No. 583,795, filed August 23, 1922, granted June 25, 1929, expires June 25, 1946.

Utzman application Serial No. 477,371, filed June 14, 1921, finally allowed April 26, 1929. Patent No. 1,731,116 will issue October 8, 1929.

Knode application Serial No. 590,358. Filed September 25, 1922.

Utzman application Serial No. 581,361. Filed August 12, 1922.

Williams application Serial No. 582,606. Filed August 18, 1922.

Roos application Serial No. 733,197, filed August 20, 1924.

Bayer application Serial No. 661,723, filed September 8, 1923.

Roos application Serial No. 3477, filed January 19, 1925.

Roos application Serial No. 142,155, filed October 16, 1926.

Haggerty patent No. 1,500,452. Application Serial No. 565,433, filed June 2, 1922, granted July 8, 1924.

Hite patent No. 1,230,297. Application Serial No. 115,649, filed August 18, 1916, granted June 19, 1917.

9442 *Government Exhibit No. 11*

LICENSE AGREEMENT

This agreement made this 18th day of October, A. D. 1929, by and between the United States Gypsum Company, an Illinois corporation, of Chicago, Illinois, hereinafter referred to as Licensor, and Ebsary Gypsum Co., Inc. a New York corporation, of Newark, New Jersey, hereinafter referred to as Licensee, Witnesseth, that

Whereas, Licensor is the owner of certain letters patent and applications for letters patent of the United States covering an improved gypsum wallboard and method or process of making the same, together with machines and appliances for the manufacture of such inventions which, with certain other patents, are more specifically set forth in Exhibit A attached hereto and made a part hereof; and

Whereas, Licensor was the owner of all of the right, title and interest in and under letters patent of the United States number 1,029,328 and number 1,034,746 known as the Utzman Patents, the last of which expired August 6, 1929, which said Utzman Patents were adjudicated by the United States District Court for the Northern District of Illinois, Eastern Division, and by the United States Circuit Court of Appeals for the Seventh Circuit, and were decreed by said courts as valid and having been infringed by the defendants named in said suits; and

Whereas, Birdsey Patent number 1,358,508, mentioned in said Exhibit A, was decreed by the United States District Court for the Northern District of Ohio as valid and infringed by the defendant in said cause by reason of
9443 its having made, used and sold plasterboard and/or gypsum wallboard with edges of the character disclosed in said patent, and said District Court ordered a perpetual injunction and accounting against defendant, which cause is now pending on appeal before the United States Circuit Court of Appeals for the Sixth Circuit; and

Whereas, Licensor is the owner of a new process disclosed in that certain application for United States letters patent filed by Carlisle K. Roos, entitled "Cementitious Material," now pending in the United States Patent Office and covering the process of making a cellular product, which comprises forming a tenacious foam and mixing the foam with a cementitious material, and of certain other applications filed by said Roos covering specific employment of said invention, and Licensor has heretofore acquired the sole and exclusive rights in the United States of America (when gypsum is used as the main binding material) in that certain application for United States letters patent described in Exhibit A filed by Erik Christian Bayer, entitled "Methods of Manufacturing Porous Building Materials," and relating to a process broadly similar to that of said first mentioned Roos application, which said Roos and Bayer applications are described and set forth in said Exhibit A; and

Whereas, Licensor has agreed to purchase that certain Haggerty Patent number 1,500,452, dated July 8, 1924, and that certain Hite Patent number 1,230,297, dated June 19, 1917, both mentioned in said Exhibit A, subject to approval of the United States District Court for the Northern District of Illinois, Eastern Division thereof, and other United States district courts in receivership proceedings
9444 therein pending against the present owner of said patents; and

Whereas, gypsum wallboard or plasterboard manufactured by Licensee is made by the use of the machines or according to the processes or embodying the claims of some or all of said patents and applications for letters patent set forth in said Exhibit A, and Licensee desires to include in its manufacture the inventions and improvements set forth and claimed in said Roos and Bayer applications and said Haggerty and Hite patents, and to obtain a license from Licensor to make, use and sell the inventions and improvements set forth and claimed in all of said patents and applications for letters patent set forth in said Exhibit A throughout the full term thereof; and

Whereas, Licensor has agreed to grant said license and to make certain disclosures as to the said Roos and Bayer applications referred to in said Exhibit A, upon the terms and conditions hereinafter stated;

Now, therefore, in consideration of the sum of One Dollar and other good and valuable considerations, the receipt whereof is hereby acknowledged from each party to the other party, and in consideration of the mutual covenants and agreements hereinafter contained, the parties hereto do hereby agree as follows, to-wit:

1. Licensor agrees promptly to disclose to Licensee all information and formulae which it now has or may obtain relating to the process of making a cellular product through the formation of a tenacious foam and mixing the foam with a cementitious material, as set forth and claimed in said applications for letters patent filed by Carlisle K. Roos and Erik Christian Bayer, in so far as the same is or may be applied to gypsum, and including all information and formulae for the manufacture of gypsum
9445 plasterboard and gypsum wallboard embodying the inventions and improvements set forth and claimed in said Roos and Bayer applications, together with a description of the machines or appliances which it now has for making the same. It will assist Licensee to make its plant ready for practicing said process in the manufacture of plasterboard and gypsum wallboard by furnishing without cost to Licensee the advice and instruction of Licensor's experts and information with respect to the purchase and cost of said machines and appliances.

2. Licensor has agreed to and does hereby give and grant unto Licensee an indivisible and non-exclusive right, license and privilege of using the process or processes and making and using the machines and/or inventions set forth and claimed in any and all of said patents and/or applications for letters patent set forth in Exhibit A attached hereto in the manufacture of gypsum plasterboard and/or gypsum wallboard at the plants or factories now owned and/or operated by Licensee, or at any other plant or factory hereafter owned and/or operated or controlled by it or any subsidiary, associated or affiliated company, and of manufacturing at any such place or places, selling and using in the United States of America and the territories and possessions thereof gypsum plasterboard or gypsum wallboard manufactured at any such place or places and embodying the inventions and improvements set forth and claimed in said patents and/or applications for letters patent de-

scribed in said Exhibit A, for the full term of said
9446 letters patent or of any letters patent which may be granted for or upon any of said applications, including any extensions and/or reissues thereof.

It is expressly understood and agreed that the indivisible and non-exclusive right, license and privilege aforesaid is granted upon condition that the Licensor shall have and it hereby reserves the right to determine and fix at any time and to change from time to time during the existence of said patents and so long as said license shall continue, the minimum price or prices at which Licensee shall sell any plasterboard or gypsum wallboard manufactured by Licensee by use of any of the machines or appliances covered by any of said letters patent and which shall embody the inventions and improvements set forth and claimed in any of said patents which are presently issued, or any of said plasterboard or gypsum wallboard manufactured by second parties and which shall embody the inventions and improvements set forth and claimed in either patent number 1,500,452 or patent number 1,230,297, or commencing with the date when a patent shall have been granted or issued for or upon any of the said Roos or Bayer inventions and/or applications any of said plasterboard or gypsum wallboard manufactured by Licensee, the body or core of which is made according to the process set forth and claimed in any patent granted for or upon any of said Roos or Bayer inventions and/or applications, and in case Licensor shall exercise the right so reserved, it shall first serve written notice of its intention so to do upon Licensee, accompanied with a statement of the minimum price or prices at which Licensee shall sell said gypsum plasterboard or gypsum wallboard, and thereafter shall give to Licensee writ-
9447 ten or telegraphic notice of any change in such price or prices, and Licensee expressly covenants and agrees that it will not, so long as this agreement shall continue in force and effect and after receipt of such notice given in accordance with the terms and conditions hereof, directly or indirectly, sell or offer for sale any gypsum plasterboard or gypsum wallboard manufactured by it by use of any of the machines or appliances covered by any of said patents and which during the existence thereof shall embody the inventions and improvements set forth and claimed in any of said patents which are presently issued, or any gypsum plasterboard or gypsum wallboard manufactured by second parties and which during the existence thereof shall embody the inventions and improvements set

forth and claimed in either patent number 1,500,452 or patent number 1,230,297, or any gypsum plasterboard or gypsum wallboard manufactured by Licensee after a patent shall have issued upon any of the said Roos or Bayer inventions and/or applications and during the existence thereof, the body or core of which is made according to the process set forth and claimed in any patent granted for or upon any of said inventions and/or applications, at a price or prices less than that stated by Licensor in said notice or in any such written or telegraphic notice of a change in such price or prices.

Said minimum price shall not be more than that price at which Licensor determines to sell plasterboard or gypsum wallboard embodying the inventions and improvements set forth and claimed in said patents to its own like trade in the same market.

9448 3. Licensee agrees to pay to Licensor for said disclosures, information and assistance and the agreements of Licensor herein contained, and for the right, license and privilege of using the processes and making and using the machines and/or inventions in the manufacture of plasterboard and gypsum wallboard covered by said patents and applications for letters patent described in said Exhibit A, and for the privilege of manufacturing, using and/or selling plasterboard and gypsum wallboard embodying the inventions and improvements set forth and claimed in said patents and applications for letters patent, an amount (hereinafter for convenience referred to as a license fee or royalty) equivalent to three and one-half per cent (3½%) of the selling price of Licensee of all plasterboard and gypsum wallboard of every kind, whether or not made by the use of said machines and/or embodying the inventions and improvements set forth and claimed in said letters patent or applications for letters patent, manufactured and sold by Licensee between the date hereof and February 10, 1937, the date of the expiration of patent number 1,330,413 mentioned in said Exhibit A, and thereafter an amount equivalent to two per cent (2%) of the selling price of Licensee of all such plasterboard and gypsum wallboard manufactured and sold by it between February 10, 1937, and July 8, 1941, the date of the expiration of said patent number 1,500,452, and thereafter an amount equivalent to one per cent (1%) of the selling price of Licensee of all such plasterboard and gypsum wallboard manufactured

and sold by it between July 8, 1941, and the date of the expiration of the last to expire of any patent granted or issued for or upon any of the said Roos or Bayer applications; Provided, However, that if no patent shall
9449 have been granted or issued for or upon any of said Roos or Bayer applications covering said process referred to in paragraph 1 hereof, within two (2) years from the date hereof, then commencing with the end of said two (2) year period the said license fees or royalties agreed to be paid by Licensee shall be reduced by one per cent (1%) of Licensee's said selling price until such patent shall have been granted or issued for or upon any of said Roos and Bayer applications, at which time Licensee shall again commence to pay the full amount of said license fees or royalties until the date of the expiration of the last to expire of any such patent or patents. If at the time of the execution of this contract Licensee's plant shall not be equipped to practice the process set forth and claimed in said Roos or Bayer applications in the manufacture of plasterboard or gypsum wallboard, then Licensee shall pay as such license fees or royalties two and one-half per cent (2½%) of said selling price between the date hereof and January 1, 1930, or such earlier date as Licensee shall make its plant ready to practice said process in the manufacture of said board, and the payment of three and one-half per cent (3½%) of said selling price and said period of two (2) years in this paragraph mentioned shall commence on January 1, 1930, or such earlier date as Licensee shall have made its plant ready as aforesaid. The amount of one per cent (1%) of said selling price included in said royalties or license fees is the amount agreed to be paid by Licensee for the use of said Haggerty and Hite patents.

Licensee's selling price shall mean the delivered selling price of Licensee, less freight paid by the customer and less regular cash discounts allowed by Licensee.

4. It is further agreed that so long as the license provided for in paragraph 2 hereof shall remain in force
9450 between the parties hereto, or in case the license granted under paragraph 2 hereof shall expire before the expiration of the patents specifically described in this paragraph, and the said license granted under paragraph 2 shall continue in force between the parties hereto for the full term of the last to expire of any of said patents described in said Exhibit A, or of any patent or patents

granted for or upon any application described in said Exhibit A, then until the expiration of the patents specifically described in this paragraph, Licensor does hereby give and grant unto the Licensee an indivisible and non-exclusive right, license and privilege of making and using the inventions set forth and claimed in those certain patents known as the Birdsey Plaster-Board Bundle Patent number 1,696,877, dated December 25, 1928, Utzman Patent number 1,724,740 dated August 13, 1929, Birdsey Patent number 1,730,113 dated October 1, 1929, and applications for letters patent serial numbers 329,581 filed December 31, 1928, and 296,354 filed July 30, 1928, and any patent which may be granted for or upon said applications, including any extensions and/or reissues thereof, at the plants or factories now owned or operated by Licensee or at any other plant or factory hereafter owned and/or operated and controlled by Licensee or any subsidiary, associated or affiliated company of Licensee, and of selling or using bundles of plasterboard and/or gypsum wallboard put up or bundled by Licensee at any such place or places according to the claims set forth and claimed in the said patents and applications for letters patent in this paragraph described, upon the terms and conditions hereinafter stated.

Licensee agrees to pay to Licensor for the right, license and privilege of making, using or selling the inventions set forth and claimed in said patents and applications in the next preceding paragraph described, in addition to the sums hereinabove set forth, an amount (hereinafter referred to as a license fee or royalty) equivalent to ten cents (10¢) per one thousand (1,000) square feet of plasterboard and/or gypsum wallboard which is sold by Licensee
9451 in bundles of any kind, whether or not the bundles shall be made according to the claims set forth and claimed in said patents, which said license fee or royalty shall be payable at the times and in accordance with the terms of paragraph 6 hereof. The term "bundle" shall not include unbundled material wired or strapped for purpose of transportation or unbundled material shipped for export or coastwise trade in fiber, wooden or other crates.

5. It is expressly understood and agreed that the license herein granted shall be personal to the Licensee, and that the same or any right herein or thereunder shall not be sold or assigned or transferred without the written consent of Licensor, or transferred by operation of law; Provided,

However, that the same may be assigned by Licensee to any company acquiring all the assets and business or all of the capital stock of Licensee, on condition that Licensee shall first obtain an agreement in writing from any such assignee agreeing to assume all of the obligations of Licensee under this agreement and to be bound by all of the terms and conditions hereof and shall deliver such agreement to Licensor. Licensee agrees not to sell all of its assets and business or all of its capital stock or to transfer and convey its plasterboard and/or wallboard business, or its assets used in connection therewith, without requiring the purchaser or purchasers thereof to assume, in writing, all of the obligations of Licensee hereunder, and to agree to be bound by all of the terms and conditions of this contract, and deliver such agreement to Licensor.

6. Licensee agrees to keep separate full and accurate books of accounts and records showing the exact
9452 quantity of all plasterboard and gypsum wallboard manufactured and sold by it, as well as a separate record of all plasterboard and/or gypsum wallboard sold by it in bundles, and agrees that on or before the twentieth day of each calendar month it will render unto Licensor true written returns verified under oath by an officer or other agent of Licensee, setting forth the quantity of all plasterboard and/or gypsum wallboard manufactured and sold by it during the preceding calendar month and the quantity thereof put up and sold by it in bundles, together with the price or prices at which the same was sold and is to be accounted for hereunder, such written returns to be delivered to Licensor at its office in Chicago, Illinois, and Licensee agrees to pay to Licensor on or before the 20th day of each calendar month at the office of Licensor at Chicago, Illinois, the hereinbefore stipulated royalties or license fees which may then be due under this agreement on account of all said plasterboard and/or gypsum wallboard manufactured and sold by it and put up and sold by it in bundles during the next preceding calendar month.

7. Licensor, or its duly authorized representative, shall have the right at all reasonable times during business hours to inspect the books of account and records of Licensee referred to in the next preceding paragraph hereof, including all records of every kind showing the quantity of said plasterboard and gypsum wallboard manufactured and sold by it and the quantity thereof put up and sold by it in bun-

dles and the price or prices at which the same was sold, and to make copies thereof and memoranda therefrom; Provided, However, that if at the time of any such examination Licensee shall request it in writing, then such examination shall be made by a certified public accountant agreed upon between the parties hereto, in which event the expense thereof shall be borne equally by both parties. If
9453 the parties at any such time shall not agree upon the certified public accountant to make such examination, then Licensor shall name three certified public accountants of good standing not directly or indirectly employed by it or in any other way connected with it, and if Licensee shall not accept any one of them, then Licensor shall have the right to make such examination itself.

8. Licensee agrees that all plasterboard or gypsum wallboard manufactured and sold by it embodying the claims of any of said patents and/or applications for letters patent shall be distinctly marked with the word "Patented" and/or "Patent Applied for," as the case may be, together with the numbers of any of said patents or applications specified by Licensor, the claims of which may be embodied in said plasterboard or gypsum wallboard, and in connection with said marking Licensee will further mark said board with the words "Licensed Under the Above Letters Patent" and/or "Licensed Under Pending Applications for Letters Patent," as the case may be, which marking shall be plainly visible. Licensee further agrees that all bundles put up and sold by it embodying the claims of any of said patents numbers 1,696,877, 1,724,740 and 1,730,113 and/or any of said applications serial numbers 329,581 and 296,354 shall be similarly marked together with the numbers of said bundle patents and/or applications.

9. Having regard for the fact that there are or may be certain manufacturers of plaster or gypsum products, jobbers or other wholesale distributors of such products, who do not or may not manufacture gypsum wallboard or plasterboard but who desire or may desire to have gypsum wallboard or plasterboard manufactured for them, it is understood and agreed that Licensee may manufacture for jobbers (being those who do not manufacture but buy and sell plasterboard or gypsum wallboard in straight cars or in mixed cars with other building material and
9454 who do not sell at retail), gypsum wallboard or plasterboard embodying the inventions and improvements

set forth and claimed in said letters patent or in any letters patent after the same shall have been issued, granted for or upon any of the said applications and may with the written consent of first party manufacture for any such other manufacturer or other wholesale distributor, gypsum wallboard or plasterboard embodying the said inventions and improvements; Provided, However, that the said license fee or royalty to be paid to Licensor as hereinbefore provided shall be based upon all gypsum wallboard and plasterboard manufactured for and sold and invoiced to such other manufacturer, jobber or wholesale distributor and upon the regular selling price of Licensee of such plasterboard or gypsum wallboard to its regular dealer trade at the time of such sale and invoice, and shall not be based upon the price at which plasterboard or gypsum wallboard is sold and invoiced by Licensee to such other manufacturer, jobber or wholesale distributor. Nothing hereinbefore contained in this agreement shall be construed to give Licensee the right to manufacture gypsum plasterboard or gypsum wallboard embodying the inventions and improvements set forth and claimed in any of said letters patent or in any letters patent after the same shall have been granted for or upon any of said applications for said other manufacturers or wholesale distributors and to sell the same, without the written consent of Licensor.

10. Licensee covenants and agrees that all of said gypsum plasterboard and gypsum wallboard manufactured and sold by it embodying the inventions and improvements set forth and claimed in any of said Letters patent or patents issued upon any of said applications and commonly known in the trade as "seconds" shall be plainly invoiced as
9455 "seconds" and shall be plainly marked with a visible red stamp or label firmly fixed on each of said boards showing the word "seconds" in letters at least three inches in height.

11. As one of the considerations for the indivisible and non-exclusive license herein and hereby granted, Licensee hereby acknowledges the validity of said letters patent or of any letters patent which may be granted or issued for or upon said applications, forming the subject-matter of said license so long as said license shall remain in full force and effect, and agrees that it will not at any time during the existence of said license, directly or indirectly, by itself, through or together with another or others, contest the va-

lidity of either or any of said letters patent or the title thereto of Licensor.

12. In the event that either party shall at any time neglect, fail or refuse to keep or perform any of the conditions or agreements herein to be kept by it and performed, then the other party, at its election, may serve upon the party in default written notice of intention to terminate this license, which notice shall specify the alleged neglect, failure or refusal, and if within thirty (30) days from the date of delivery of said notice the party in default shall not cure the default specified in said notice, then the other party may cancel and terminate this agreement by notifying the party in default in writing of its election so to do, without the necessity of any court action; Provided, However, that neither party shall be relieved thereby from any liability accrued at the time of such termination; and Provided Further, that if the party upon whom said notice is served shall deny that it is in default in whole or in part, as
9456 specified therein, then the party serving such notice shall not be privileged to cancel this contract on account of the alleged default specified therein, provided the party upon whom said notice shall have been served shall within said thirty (30) day period perform the agreements and submit the question to arbitration, as in this paragraph hereinafter set forth. In case of any such denial the party upon whom the notice shall have been served shall within said thirty (30) day period state in writing to the other party wherein and in what respect it denies the default specified in said notice and shall at the same time make good any default specified therein which it does not deny and appoint in writing one person as arbiter to arbitrate the question of whether or not it is in default in respect to that which it shall have denied as aforesaid, it being understood, however, that if the question shall be with respect to the amount of royalties or license fees to be paid hereunder, then the Licensee shall first pay or offer to pay the amount of such license fees or royalties which it then admits is due and payable in accordance with the terms hereof, and the acceptance thereof by the Licensor shall not operate as a waiver of any of its rights hereunder or of any claim it may have made in any notice served by it upon Licensee. The party so serving said notice shall, after the other party shall have made good any default specified in said notice which it did not deny in writing as aforesaid, including the payment of royalties or license fees, if any, ad-

mitted by it to be due and payable hereunder, and within ten (10) days from the date of the appointment of said first arbiter in accordance with the terms hereof, appoint in writing another person as arbiter, and the two persons so appointed shall within ten (10) days or as soon as possible thereafter appoint in writing a third person as arbiter. The three persons so appointed shall, within thirty (30) days from the date of the appointment of said last mentioned arbiter, or as soon as possible thereafter, decide whether or not the party upon whom said notice has been
9457 served is in default hereunder with respect to anything contained in said notice. The decision of a majority of the three arbiters so appointed shall constitute a final settlement of the said question and be binding and conclusive upon both the Licensor and the Licensee, and if it shall have been determined by a majority of the said arbiters that the party upon whom said notice was served is in default with respect to anything contained in said notice and the party so found to have been in default shall fail or refuse to comply with the terms of the award or finding made by said arbiters within thirty (30) days from the date such award or finding shall have been made, the party serving said notice may at its election terminate and cancel this agreement in writing. In the event of default hereunder by either party and notice of such default is served by the other party as herein provided, and after service of such notice the party in default shall cure the same as hereinbefore provided the same shall constitute a nullification of said notice to the same effect as if said notice had not been served. In case at any time the Licensee shall be adjudged a bankrupt, then the license hereunder shall immediately be and become canceled and terminated, but the Licensor shall not thereby be prevented from collecting all license fees or royalties accrued hereunder at the time of such termination. The waiver of any breach by either party shall not be interpreted as constituting a waiver of any further breach or breaches. Either party may proceed by action to specifically enforce this contract or any of the terms, conditions and covenants thereof by injunction or in such other manner as may be provided by law.

13. Any notice to be given under the terms hereof may be served by the Licensor or the Licensee by mailing the same to the other party hereto, postage prepaid and

registered, addressed to any of its officers at its last
9458 known principal office, and the deposit of any such notice in the United States mails, postage prepaid and so addressed, shall constitute service of notice hereunder. Any telegraphic notice given under paragraph 2 hereof shall be confirmed in writing in the ordinary course of business.

14. It Is Understood and Agreed that if at any time during the term hereof the Licensee shall, in the judgment of the Licensor, suffer substantial detriment by reason of any infringement on the part of any person or persons of any of said letters patent or of any patent that may be granted upon said applications, under which this license is granted, the Licensor will afford the Licensee such reasonable protection as in the judgment of the Licensor shall be necessary or proper.

If a court of last resort upon final appeal or review shall decree all the claims of the patents granted for or upon said Roos and Bayer applications invalid or Licensee shall be permanently enjoined from manufacturing plasterboard and gypsum wallboard, the body or core of which is made according to the process set forth and claimed in said Roos and Bayer applications in such manner that they cannot practice in any way any of the inventions set forth in the said applications, and such injunction shall be made final by a court of last resort upon final appeal or review, then from the time the court of last resort upon final appeal or review shall decree that all the claims of the patents granted or issued for or upon said Roos and Bayer applications are invalid, or make such injunction permanent and final, the license fees or royalties to be paid by Licensee hereunder shall be reduced by one per cent (1%) of said selling price, or if a court of last resort upon final appeal or review shall decree that
all the claims of said Haggerty and Hite patents
9459 are invalid or Licensee shall be permanently enjoined from manufacturing plasterboard and gypsum wallboard embodying the inventions and improvements set forth and claimed in said Haggerty and Hite patents in such manner that they cannot practice in any way any of the inventions set forth in said patents, and such injunction shall be made final by a court of last resort upon final appeal or review, then from the time the court of last resort upon final appeal or review shall decree all claims of said

Haggerty and Hite patents invalid or make said injunction permanent and final, the said license fees or royalties agreed to be paid by Licensee for said Haggerty and Hite patents shall cease and determine.

15. In case Licensor shall, subsequent to the effective date hereof, grant to any other person except Abel Davis and Eugene Holland, receivers of the Universal Gypsum & Lime Co. or their successors or to the said Universal Gypsum & Lime Co., any license under said patents or applications for letters patent set forth in said Exhibit A and paragraph 4 hereof for the manufacture, sale or use of gypsum plasterboard or gypsum wallboard or bundles thereof, embodying the claims or inventions set forth and claimed in said patents or said applications, or shall grant any right under any such license, upon terms more favorable than those granted hereunder to this Licensee, then it will grant to this Licensee a license on the same terms or extend to it the same right granted to any such other person. This paragraph shall not apply to any license granted on or prior to the effective date hereof, nor shall the same apply to the terms of settlement of any claim of Licensor or provisions with respect to the payment thereof, contained in any such license.

9460. 16. The terms "gypsum plasterboard," "gypsum wallboard" and "plasterboard" shall be understood to mean all board made of gypsum, by whatever name called, having the characteristics of gypsum plasterboard or gypsum wallboard, irrespective of the purpose for which the same may be sold or used, and shall include gypsum laths and all other gypsum boards.

17. If at any time after the expiration of two (2) years from January 1, 1930, or such earlier date that Licensee shall make its plant ready to practice the process set forth and claimed in said Roos and Bayer applications in the manufacture of gypsum wallboard or plasterboard, there shall have been invented or come into use any process which shall make the said process of forming a cellular product as set forth and claimed in said Roos and Bayer applications obsolete or shall displace the same, and the Licensor shall in its own manufacture permanently and wholly abandon the use of the subject-matter of the claims of said Roos and Bayer applications, it shall notify Licensee in writing thereof, and Licensee may then, upon thirty (30) days' written notice to Licensor, cancel and terminate this

license in so far as the same applies to said Roos and Bayer applications or to the patent or patents granted or issued therefor or thereupon, and from the date of such cancellation the royalties or license fees to be paid by Licensee hereunder shall be reduced by one per cent (1%) of its said selling price; Provided, However, that if Licensor shall not in such event permanently and wholly abandon the use of said process but shall only partially abandon the same, then to the extent or degree and for the term that Licensor shall abandon the same in its own manufacture Licensee shall be relieved from the payment of license fees or royalties to the same extent, that is to say, if Licensor shall in such event manufacture and sell any board the core of which is made of gypsum of a
9461 particular size, kind or make, or for a particular purpose or use, without the use of said process embodied therein, then if Licensee shall manufacture and sell the same board of the same particular size, kind or make for the same purpose or use, without the use of said process embodied therein, then Licensee shall not be required to pay royalties or license fees upon such particular board for the term that Licensor shall manufacture and sell the same. "License fees" and "royalties" for the purpose of this paragraph shall mean one per cent (1%) of said selling price. The use by Licensor of any improvement which Licensee has the right to use as set forth in paragraph 18 hereof, or the manufacture of plasterboard or gypsum wallboard without the use of said process for sale only in foreign countries where Licensor has no patented rights in said process, shall not constitute an abandonment of said process or a partial abandonment thereof within the meaning of this paragraph.

18. If Licensor shall at any time during the existence of this agreement make or obtain any improvement for the formation of the bubble described in process set forth in said Roos and Bayer applications and/or method of its introduction in the core of plasterboard or gypsum wallboard, and which improvement is covered by the claims of said Roos and Bayer applications, and shall itself use the same in its own manufacture, then so long as Licensee shall continue to pay the license fees or royalties hereinbefore stipulated the right, license or privilege herein contained shall be extended to and include the use of said improvement in the manufacture by Licensee of gypsum

plasterboard or gypsum wallboard, subject to all of the terms and conditions herein contained, except only that Licensee shall not be required to pay any additional sum, royalty or license fee therefor. It is further understood that if a. patent or patents shall be
9462 granted or issued for or upon said improvement, then all of the provisions of this agreement, as well as the provision of paragraph 2 hereof reserving the right in Licensor to determine and fix at any time and to change from time to time the minimum price or prices at which Licensee shall sell any gypsum plasterboard or gypsum wallboard manufactured by Licensee and embodying the claims of said patents, shall apply to improvement set forth and claimed in any patent or patents granted or issued for or upon said improvement. Licensor will promptly notify Licensee of the general adoption by it of any such improvement in its own manufacture, together with such information as it may possess as to the use thereof in the manufacture of plasterboard and gypsum wallboard.

19. Licensee has investigated and fully satisfied itself with respect to the inventions and improvements set forth in said patents and applications for letters patent and the use thereof in its own manufacture, and has executed this agreement without relying upon any representations which may have been made by Licensor with respect thereto. No representations have been made by Licensor not expressly stated in this contract which Licensee shall at any time have any right to rely upon as an inducement for its making this contract or for any result or results to be obtained by Licensee in its own plant by its use of the inventions and improvements set forth and claimed in any of said patents or applications for letters patent.

20. The Licensor agrees at any time during the term hereof to extend to Licensee, upon its written request, an indivisible and non-exclusive license or privilege to use the said process or processes set forth and claimed in said Roos or Bayer applications in the manufacture in its said plants of any other gypsum product not specifically covered by this agreement and in which Licen-
9463 sor shall use the same in its own manufacture and to sell the same, upon the payment to Licensor of one per cent (1%) of the selling price of Licensee of all said other gypsum product, whether or not embodying the said

process in making the same, manufactured and sold by Licensee and upon the same terms as set forth herein and subject to all of the conditions hereof, in which event in the agreement for the same there shall be substituted for the words "plasterboard and/or gypsum wallboard" the name of such other product or products. An agreement containing all of said terms and conditions shall be reduced to writing and signed by both parties before the same shall become effective.

21. From the date this contract shall become effective the same shall supersede all prior license agreements at any time made between the parties hereto relating to the subject-matter hereof or relating to any of the patents or applications for letters patents referred to in this agreement; Provided, However, that Licensor shall not be barred or prevented from recovering any claim which may have accrued under any such prior license agreements prior to the time this contract shall become effective, including all payments, royalties or license fees agreed to be paid thereunder by Licensee up to the date this agreement shall go into effect.

22. This license and all of the covenants and agreements hereof shall become effective upon the date Licensor shall receive a conveyance and assignment of said Haggerty and Hite patents to it, pursuant to authority granted by the United States District Court to the receivers of the Universal Gypsum & Lime Co., a Delaware corporation, and to said company, to sell and assign said Haggerty and Hite patents to Licensor, and from the effective date thereof this license and all of the covenants and agreements hereof shall be binding upon and inure to the benefit of the
9464 successors and assigns of the parties hereto, but nothing in this paragraph shall be construed to permit an assignment hereof by Licensee, except as hereinabove specifically provided.

In Witness Whereof the parties hereto have caused these presents to be signed by their respective presidents, attested by their respective secretaries and their corporate seals to be hereunto affixed in duplicate the day and year first above written.

UNITED STATES GYPSUM COMPANY

By S. L. AVERY

Its President.

ATTEST:

R. G. BEAR

Secretary.

EBSARY GYPSUM CO., INC.,

By F. G. EBSARY

Its President.

[Corporate Seal.]

ATTEST:

O. E. HOUGH

Secretary.

9465 EXHIBIT "A"

Utzman patent No. 1,330,413. Application filed September 3, 1918, granted February 10, 1920, expires February 10, 1937.

Birdsey patent No. 1,358,508. Application filed January 2, 1920, granted November 9, 1920, expires November 9, 1937.

Utzman patent No. 1,383,249. Application filed August 13, 1918, granted June 28, 1921, expires June 28, 1938.

Birdsey patent No. 1,383,254. Application filed July 29, 1918, granted June 28, 1921, expires June 28, 1938.

Birdsey patent No. 1,383,255. Application filed January 2, 1920, granted June 28, 1921, expires June 28, 1938.

Birdsey patent No. 1,384,298. Application filed August 19, 1920, granted July 12, 1921, expires July 12, 1938.

Birdsey patent No. 1,395,031. Application filed January 2, 1920, granted October 25, 1921, expires October 25, 1938.

Birdsey patent No. 1,395,032. Application filed January 2, 1920, granted October 25, 1921, expires October 25, 1938.

Birdsey patent No. 1,406,967. Application filed January 3, 1921, granted February 21, 1922, expires February 21, 1939.

Birdsey patent No. 1,427,939. Application filed January 3, 1921, granted September 5, 1922, expires September 5, 1939.

Birdsey patent No. 1,428,624. Application filed January 2, 1920, granted September 12, 1922, expires September 12, 1939.

Brookby patent No. 1,489,693. Application filed September 25, 1922, granted April 8, 1924, expires April 8, 1941.

Birdsey patent No. 1,514,827. Application filed October 6, 1921, granted November 11, 1924, expires November 11, 1941.

Birdsey patent No. 1,515,380. Original application filed January 2, 1920, granted November 11, 1924, expires November 11, 1941.

9466 Birdsey patent No. 1,518,243. Application filed September 22, 1922, granted December 9, 1924, expires December 9, 1941.

Birdsey patent No. 1,525,715. Application filed January 2, 1920, granted February 10, 1925, expires February 10, 1942.

Birdsey patent No. 1,526,307. Application filed October 10, 1921, granted February 10, 1925, expires February 10, 1942.

Utzman patent No. 1,540,045. Application filed March 14, 1923, granted June 2, 1925, expires June 2, 1942.

Birdsey patent No. 1,558,459. Application filed October 4, 1922, granted October 27, 1925, expires October 27, 1942.

Birdsey patent No. 1,561,635. Application filed January 3, 1921, granted November 17, 1925, expires November 17, 1942.

Armstrong patent No. 1,278,821. Application filed January 4, 1918, granted September 17, 1918, expires September 17, 1935.

Armstrong patent No. 1,348,387. Application filed March 15, 1919, granted August 3, 1920, expires August 3, 1937; application for reissue filed June 3, 1922, Serial No. 565,737, reissued January 24, 1928 as Reissue patent No. 16,860.

Armstrong patent No. 1,367,292. Application filed July 12, 1919, granted February 1, 1921, expires February 1,

1938; application for reissue filed June 9, 1922, Serial No. 567,205, reissued May 22, 1928 as Reissue Patent No. 16,969.

Utzman patent No. 1,455,127. Application filed June 14, 1922, granted May 15, 1923, expires May 15, 1940.

Utzman patent No. 1,492,588. Application filed June 14, 1922, granted May 6, 1924, expires May 6, 1941.

Williams patent No. 1,519,180. Application filed August 18, 1922, granted December 16, 1942, expires December 16, 1941.

Armstrong patent No. 1,556,575. Application filed October 1, 1921, granted October 13, 1925, expires October 13, 1942.

Armstrong patent No. 1,399,455. Application filed February 24, 1920, granted December 6, 1921, expires December 6, 1938.

9467 Tyler patent No. 1,417,117. Application filed November 15, 1919, granted May 23, 1922, expires May 23, 1939.

Birdsey patent No. 1,643,801. Application Serial No. 437,062, filed January 13, 1921, granted September 27, 1927, expires September 27, 1944.

Birdsey patent No. 1,650,930. Application Serial No. 506,676, filed October 10, 1921, granted November 29, 1927, expires November 29, 1944.

Birdsey patent No. 1,676,318. Application Serial No. 545,231, filed March 20, 1922, granted July 10, 1928, expires July 10, 1945.

Birdsey patent No. 1,710,915. Application Serial No. 555,672, filed April 19, 1922, granted April 30, 1929, expires April 30, 1946.

Smith patent No. 1,603,158. Application Serial No. 662,359, filed September 12, 1923, granted October 12, 1926, expires October 12, 1943.

Birdsey patent No. 1,666,161. Application Serial No. 737,237, filed September 12, 1924, granted April 17, 1928, expires April 17, 1945.

Utzman patent No. 1,631,108. Application Serial No. 750,224, filed November 17, 1924, granted May 31, 1927, expires May 31, 1944.

Brookby & Absmeier patent No. 1,689,322. Application Serial No. 91,297, filed March 1, 1926, granted October 30, 1928, expires Oct. 30, 1945.

Armstrong patent No. 1,701,291. Application Serial No. 310,470, filed July 12, 1919, granted February 5, 1929, expires February 5, 1946.

Utzman patent No. 1,638,280. Application Serial No. 374,833, filed April 17, 1920, granted August 9, 1927, expires August 9, 1944.

Armstrong patent No. 1,641,611. Application Serial No. 377,421, filed April 29, 1920, granted September 6, 1927, expires September 6, 1944.

Speer patent No. 1,686,671. Application Serial No. 427,044, filed November 29, 1920, granted October 9, 1928, expires October 9, 1945.

Speer patent No. 1,641,648. Application Serial No. 427,045, filed November 29, 1920, granted September 6, 1927, expires September 6, 1944.

Mehlhope patent No. 1,604,707. Application Serial No. 473,288, filed May 28, 1921, granted October 26, 1926, expires October 26, 1943.

9468 Gustafson patent No. 1,665,168. Application Serial No. 509,366, filed December 2, 1919, renewed October 21, 1921, granted April 3, 1928, expires April 3, 1945.

Kohler, et al. patent No. 1,673,944. Application Serial No. 540,412, filed March 2, 1922, granted June 19, 1928, expires June 19, 1945.

Utzman patent No. 1,703,183. Application Serial No. 581,362, filed August 12, 1922, granted February 26, 1929, expires February 26, 1946.

Birdsey Patent No. 1,718,890. Application Serial No. 583,795, filed August 23, 1922, granted June 25, 1929, expires June 25, 1946.

Utzman application Serial No. 477,371, filed June 14, 1921, finally allowed April 26, 1929. Patent No. 1,731,116 will issue October 8, 1929.

Knode application Serial No. 590,358. Filed September 25, 1922.

Utzman application Serial No. 581,361. Filed August 12, 1922.

Williams application Serial No. 582,606. Filed August 18, 1922.

Roos application Serial No. 733,197, filed August 20, 1924.

Bayer application Serial No. 661,723, filed September 8, 1923.

Roos application Serial No. 3477, filed January 19, 1925.

Roos application Serial No. 142,155, filed October 16, 1926.

Haggerty patent No. 1,500,452. Application Serial No. 565,433, filed June 2, 1922, granted July 8, 1924.

Hite patent No. 1,230,297. Application Serial No. 115,649, filed August 18, 1916, granted June 19, 1917.

9469 *Government's Exhibit No. 12*

LICENSE AGREEMENT

This agreement, executed in duplicate this 8th day of October, 1929, by and between the United States Gypsum Company, an Illinois corporation, of Chicago, Illinois, hereinafter referred to as a Licensor, and Niagara Gypsum Company, a New York corporation of Oakfield, New York, hereinafter referred to as Licensee, Witnesseth:

Whereas, Licensor is the owner of certain letters patent and applications for letters patent of the United States covering an improved gypsum wallboard and method or process of making the same, together with machines and appliances for the manufacture of such inventions, which with certain other patents are more specifically set forth in Exhibit A attached hereto and made a part hereof; and

Whereas, Licensor was the owner of all of the right, title and interest in and under Letters Patent of the United States, number 1,029,328 and number 1,034,746, known as the Utzman patents, the last of which expired August 6, 1929, which said Utzman Patents were adjudicated by the United States District Court for the Northern District of Illinois, Eastern Division, and by the United States Circuit Court of Appeals for the Seventh Circuit, and were decreed by said courts as valid and having been infringed by the defendants named in said suits; and

Whereas, the Birdsey Patent number 1,358,508, mentioned in said Exhibit A, was adjudicated by the United States District Court for the Northern District of Ohio, and said court decreed that said Birdsey Patent was valid
9470 and infringed by the defendant in said cause by reason of its having made, used and sold plasterboard and/or gypsum wallboard with edges of the character disclosed in said patent, and said District Court ordered a perpetual injunction and accounting against defendant, which cause is now pending on appeal before the United States Circuit Court of Appeals for the Sixth Circuit; and

Whereas, Licensor has a substantial claim against Licensee for damages and profits because and on account of an alleged infringement of said patents, and Licensor agreed to grant a license to Licensee under said patents (not including the Roos or Bayer applications and the Haggerty or Hite patents referred to in said Exhibit A) to February 10, 1937, and to settle the same claim in consideration of the payment by the Licensee to Licensor of five per cent (5%) of Licensee's selling price of all plasterboard and/or gypsum wallboard manufactured and sold by it until August 6, 1929, and one and one-half per cent (1½%) of such selling price from August 6, 1929, to February 10, 1937, plus three and one-half per cent (3½%) of such selling price from August 6, 1929, until said three and one-half per cent (3½%) of such selling price aggregated the fixed sum of Twenty-seven Thousand Nine Hundred Nineteen Dollars ($27,919.00); and

Whereas, Licensor is the owner of that certain application for United States letters patent filed by Carlisle K. Roos, entitled "Cementitious Material," now pending in the United States Patent Office and covering the process of making a cellular product, which comprises forming a tenacious foam and mixing the foam with a cementitious material, and of certain other applications filed by said
9471 Roos covering specific employment of said invention, and Licensor has heretofore acquired the sole and exclusive rights in the United States of America (when gypsum is used as the main binding material) in that certain application for United States letters patent described in said Exhibit A filed by Erik Christian Bayer, entitled "Methods of Manufacturing Porous Building Materials," and relating to a process broadly similar to that of said first mentioned Roos application, which said Roos and Bayer applications are described and set forth in said Exhibit A; and

Whereas, Licensor has agreed to purchase that certain Haggerty patent number 1,500,452 dated July 8, 1924, and that certain Hite Patent number 1,230,297 dated June 19, 1917, subject to approval of the United States District Court for the Northern District of Illinois, Eastern Division thereof, and other United States District Courts in receivership proceedings therein pending against the present owner of said patents, both of which said patents are set forth in said Exhibit A; and

Whereas, Licensee desires to include in its manufacture the inventions and improvements set forth and claimed in the said Roos and Bayer applications and said Haggerty and Hite patents referred to in said Exhibit A, and to obtain a license from Licensor to make, use and sell the inventions and improvements set forth and claimed in all of said patents and applications for letters patent described in said Exhibit A throughout the full term thereof, and Licensor has agreed to grant such a license to Licensee upon the terms and conditions hereinafter stated;

Now, therefore, in consideration of the sum of One Dollar and other good and valuable considerations, the receipt whereof is hereby acknowledged from each party to the other party, and in consideration of the mutual covenants and agreements hereinafter contained, the parties hereto do hereby agree as follows, to-wit:

9472 1. Licensor agrees promptly to disclose to Licensee all information and formulae which it now has or may obtain relating to the process of making a cellular product through the formation of a tenacious foam and mixing the foam with a cementitious material, as set forth and claimed in said applications for letters patent filed by Carlisle K. Roos and Erik Christian Bayer, in so far as the same is or may be applied to gypsum, and including all information and formulae for the manufacture of gypsum plasterboard and gypsum wallboard embodying the inventions and improvements set forth and claimed in said Roos and Bayer applications, together with a description of the machines or appliances which it now has for making the same. It will assist Licensee to make its plant ready for practicing said process in the manufacture of plasterboard and gypsum wallboard by furnishing without cost to Licensee the advice and instruction of Licensor's experts and information with respect to the purchase and cost of said machines and appliances.

2. Licensor has agreed to and does hereby give and grant unto Licensee an indivisible and non-exclusive right, license and privilege of using the process or processes and making and using the machines and/or inventions set forth and claimed in any and all of said patents and/or applications for letters patent set forth in Exhibit A attached hereto in the manufacture of gypsum plasterboard and/or gypsum wallboard at the plants or factories now owned and/or operated by Licensee, or at any other plant or factory hereafter owned and/or operated or controlled by it or any subsidiary, associated or affiliated company, and of manufacturing at any such place or places, selling and using in the United States of America and the territories and
9473 possessions thereof gypsum plasterboard or gypsum wallboard manufactured at any such place or places and embodying the inventions and improvements set forth and claimed in said patents and/or applications for letters patent described in said Exhibit A, for the full term of said letters patent or of any letters patent which may be granted for or upon any of said applications, including any extensions and/or reissues thereof.

It is expressly understood and agreed that the indivisible and non-exclusive right, license and privilege aforesaid is granted upon condition that the Licensor shall have and it hereby reserves the right to determine and fix at any time and to change from time to time during the existence of said patents and so long as said license shall continue, the minimum price or prices at which Licensee shall sell any plasterboard or gypsum wallboard manufactured by Licensee by use of any of the machines or appliances covered by any of said letters patent and which shall embody the inventions and improvements set forth and claimed in any of said patents which are presently issued, or any of said plasterboard or gypsum wallboard manufactured by second parties and which shall embody the inventions and improvements set forth and claimed in either patent number 1,500,452 or patent number 1,230,297, or commencing with the date when a patent shall have been granted or issued for or upon any of the said Roos or Bayer inventions, and/or applications any of said plasterboard or gypsum wallboard manufactured by Licensee, the body or core of which is made according to the process set forth and claimed in any patent granted for or upon any of said Roos or Bayer inventions and/or applications, and in case Licensor shall exercise the right so reserved, it shall first serve written

notice of its intention so to do upon Licensee, ac-
9474 companied with a statement of the minimum price or prices at which Licensee shall sell said gypsum plasterboard or gypsum wallboard, and thereafter shall give to Licensee written or telegraphic notice of any change in such price or prices, and Licensee expressly covenants and agrees that it will not, so long as this agreement shall continue in force and effect, and after receipt of such notice given in accordance with the terms and conditions hereof, directly or indirectly, sell or offer for sale any gypsum plasterboard or gypsum wallboard manufactured by it by use of any of the machines or appliances covered by any of said patents and which during the existence thereof shall embody the inventions and improvements set forth and claimed in any of said patents which are presently issued, or any gypsum plasterboard or gypsum wallboard manufactured by second parties and which during the existence thereof shall embody the inventions and improvements set forth and claimed in either patent number 1,500,452 or patent number 1,230,297, or any gypsum plasterboard or gypsum wallboard manufactured by Licensee after a patent shall have issued upon any of the said Roos or Bayer inventions and/or applications and during the existence thereof, the body or core of which is made according to the process set forth and claimed in any patent granted for or upon any of said inventions and/or applications, at a price or prices less than that stated by Licensor in said notice or in any such written or telegraphic notice of a change in such price or prices.

Said minimum price shall not be more than that price at which Licensor determines to sell plasterboard or gypsum wallboard embodying the inventions and improvements set forth and claimed in said patents to its own like trade in the same market.

9475 3. Licensee agrees to pay to Licensor in settlement and discharge of said claim and for said disclosures, information and assistance and the agreements of Licensor herein contained, and for the right, license and privilege of using the processes and making and using the machines and/or inventions in the manufacture of plasterboard and gypsum wallboard covered by said patents and applications for letters patent described in said Exhibit A, and for the privilege of manufacturing, using and/or selling plasterboard and gypsum wallboard embodying the inventions and improvements set forth and claimed in said patents and applications for letters patent, an amount (hereinafter for convenience referred to as a license fee or roy-

alty) equivalent to three and one-half per cent (3½%) of the selling price of Licensee of all plasterboard and gypsum wallboard of every kind, whether or not made by the use of said machines and/or embodying the inventions and improvements set forth and claimed in said letters patent or applications for letters patent, manufactured and sold by Licensee between the date hereof and February 10, 1937, the date of the expiration of patent number 1,330,413 mentioned in said Exhibit A, and thereafter an amount equivalent to two per cent (2%) of the selling price of Licensee of all such plasterboard and gypsum wallboard manufactured and sold by it between February 10, 1937, and July 8, 1941, the date of the expiration of said patent number 1,500,452, and thereafter an amount equivalent to one per cent (1%) of the selling price of Licensee of all such plasterboard and gypsum wallboard manufactured and sold by it between July 8, 1941, and the date of the expiration of the last to expire of any patent granted or issued for or upon any of the said Roos or Bayer applications; Provided,

However, that if no patent shall have been granted or
9476 issued for or upon any of said Roos or Bayer applications covering said process referred to in paragraph 1 hereof, within two (2) years from the date hereof, then commencing with the end of said two (2) year period the said license fees or royalties agreed to be paid by Licensee shall be reduced by one per cent (1%) of Licensee's said selling price until such patent shall have been granted or issued for or upon any of said Roos and Bayer applications, at which time Licensee shall again commence to pay the full amount of said license fees or royalties until the date of the expiration of the last to expire of any such patent or patents. If at the time of the execution of this contract Licensee's plant shall not be equipped to practice the process set forth and claimed in said Roos or Bayer applications in the manufacture of plasterboard or gypsum wallboard, then Licensee shall pay as such license fees or royalties two and one-half per cent (2½%) of said selling price between the date hereof and January 1, 1930, or such earlier date as Licensee shall make its plant ready to practice said process in the manufacture of said board, and the payment of three and one-half per cent (3½%) of said selling price and said period of two (2) years in this paragraph mentioned shall commence on January 1, 1930, or such earlier date as Licensee shall have made its plant ready as aforesaid. The amount of one per cent (1%) of said selling price included in said royalties or license fees is the amount

agreed to be paid by Licensee for the use of said Haggerty and Hite patents.

Licensee's selling price shall mean the delivered selling price of Licensee, less freight paid by the customer and less regular cash discounts allowed by Licensee.

In addition to the amounts hereinabove agreed to be paid by Licensee, Licensee, in further consideration of
9477 said license and in settlement of said claim, shall pay to Licensor an amount hereinafter referred to as a license fee or royalty equivalent to one and one-half per cent (1½%) of the selling price of Licensee of all such plasterboard and/or gypsum wallboard manufactured and sold by it after the date hereof, and until said one and one-half per cent (1½%) of said selling price shall have aggregated the sum of $27,650.85, being the full amount of said fixed sum which is unpaid up to date hereof. It is understood and agreed that if prior to the expiration of said license granted in paragraph 2 hereof Licensee shall not have paid to Licensor said additional sum of $27,650.85, over and above said other license fees or royalties, then Licensee shall from the date of the expiration of said license pay to Licensor five per cent (5%) of the selling price of Licensee of all plasterboard and/or gypsum wallboard manufactured and sold by it until said sum of $27,650.85 shall have been fully paid and satisfied.

It is expressly understood and agreed that this contract is executed without prejudice to Licensor to assert its said claim against Licensee for infringement of its said patents in case for any reason this contract shall not remain in force until February 10, 1937, and Licensee shall not pay to Licensor all of said royalties or license fees agreed to be paid by it up to said last mentioned date, and in addition thereto said one an one-half per cent (1½%) of said selling price until said fixed sum shall have been fully paid in accordance with the terms hereof, and it is further agreed that the claim of Licensor against Licensee for said infringement is not settled or discharged by the execution of this instrument but shall only be settled and discharged by the full performance of this contract by Licensee up to February 10, 1937, and the payment to Licensor of all of said royalties or license fees up to said last mentioned
9478 date, including said one and one-half per cent (1½%) of said selling price until said fixed sum shall have been fully paid. In case of the termination of this contract at any time prior to February 10, 1937, for any reason, or in the event of the failure of Licensee to make full payment

to Licensor of all of said royalties or license fees up to said last mentioned date, including said one and one-half per cent (1½%) of said selling price until said fixed sum is fully paid in the manner herein specified, Licensor shall have the same right which it originally had against Licensee before the execution of this agreement or the execution of any license agreement between Licensee and Licensor with respect to any of said patents, to recover of and from Licensee the full amount of its said claim for damages for infringement of its said patents, and nothing herein contained shall prevent the recovery by Licensor of all of its damages for such infringement against Licensee according to the full measure of damages allowed in such cases the same as if this contract or any other license contract made between Licensor and Licensee had never been made, less only such sums as shall have been paid by Licensee to Licensor since the date hereof on account of said additional one and one-half per cent (1½%) of said selling price in reduction of said sum of $27,650.85, in either of which events Licensee shall pay to Licensor the balance of said fixed sum then remaining unpaid in part payment of its said claim for damages, it being understood that in no event shall the recovery from Licensee in such case be less than the amount of said fixed sum then remaining unpaid. Upon the payment to Licensor of all of said royalties or license fees up to February 10, 1937, plus said additional sum of $27,650.85, at the time and in the manner herein specified, then the said claim of Licensor against
9479 Licensee for infringement of its said patents shall thereupon be and become fully settled, discharged and satisfied.

4. It is further agreed that so long as the license provided for in paragraph 2 hereof shall remain in force between the parties hereto, or in case the license granted under paragraph 2 hereof shall expire before the expiration of the patents specifically described in this paragraph, and the said license granted under paragraph 2 shall continue in force between the parties hereto for the full term of the last to expire of any of said patents described in said Exhibit A, or of any patent or patents granted for or upon any application described in said Exhibit A, then until the expiration of the patents specifically described in this paragraph, Licensor does hereby give and grant unto the Licensee an indivisible and non-exclusive right, license and privilege of making and using the inventions set forth and claimed in those

certain patents known as the Birdsey Plasterboard Bundle Patent number 1,696,877, dated December 25, 1928, Utzman Patent number 1,724,740, dated August 13, 1929, Birdsey patent number 1,730,113, dated October 1, 1929, and applications for letters patent serial numbers 329,581, filed December 31, 1928, and 296,354, filed July 30, 1928, and any patent which may be granted for or upon said applications, including any extensions and/or reissues thereof, at the plants or factories now owned or operated by Licensee or at any other plant or factory hereafter owned and/or operated and controlled by Licensee or any subsidiary, associated or affiliated company of Licensee, and of selling or using bundles of plasterboard and/or gypsum wallboard put up or bundled by Licensee at any such place or places according to the claims set forth and claimed in the said patents and applications for letters patent in this paragraph described, upon the terms and conditions hereinafter stated.

Licensee agrees to pay to Licensor for the right,
9480 license and privilege of making, using or selling the inventions set forth and claimed in said patents and applications in the next preceding paragraph described, in addition to the sums hereinabove set forth, an amount (hereinafter referred to as a license fee or royalty) equivalent to ten cents (10¢) per one thousand (1,000) square feet of plasterboard and/or gypsum wallboard which is sold by Licensee in bundles of any kind, whether or not the bundles shall be made according to the claims set forth and claimed in said patents, which said license fee or royalty shall be payable at the times and in accordance with the terms of paragraph 6 hereof. The term "bundle" shall not include unbundled material wired or strapped for purpose of transportation or unbundled material shipped for export or coastwise trade in fiber, wooden or other crates.

5. It is expressly understood and agreed that the license herein granted shall be personal to the Licensee, and that the same or any right herein or thereunder shall not be sold or assigned or transferred without the written consent of Licensor, or transferred by operation of law; Provided, However, that the same may be assigned by Licensee to any company acquiring all the assets and business or all of the capital stock of Licensee, on condition that Licensee shall first obtain an agreement in writing from any such assignee agreeing to assume all of the obligations of Licensee under this agreement and to be bound by all of the terms and conditions hereof and shall deliver such agreement to Licensor.

Licensee agrees not to sell all of its assets and business or all of its capital stock or to transfer and convey its plasterboard and/or wallboard business, or its assets used in connection therewith, without requiring the purchaser or purchasers thereof to assume, in writing, all of the obligations of Licensee hereunder, including the assumption of the claim which Licensor has against Licensee for damages for infringement of its said patents and the agree-
9481 ments in settlement and discharge thereof, as in this contract contained, and to agree to be bound by all of the terms and conditions of this contract and deliver such agreement to Licensor.

It is expressly understood that Licensee shall not discontinue its business of manufacturing and selling plasterboard and/or gypsum wallboard until Licensor shall have received the full amount of said license fees or royalties agreed to be paid by Licensee hereunder for the use of all of said patents until February 10, 1937, plus the full amount of said sum of $27,650.85 in the manner and upon the payments as hereinabove set forth.

6. Licensee agrees to keep separate, full and accurate books of account and records showing the exact quantity of all plasterboard and gypsum wallboard manufactured and sold by it, as well as a separate record of all plasterboard and/or gypsum wallboard sold by it in bundles, and agrees that on or before the twentieth day of each calendar month it will render unto Licensor true written returns, verified under oath by an officer or other agent of Licensee, setting forth the quantity of all plasterboard and/or gypsum wallboard manufactured and sold by it during the preceding calendar month and the quantity thereof put up and sold by it in bundles, together with the price or prices at which the same was sold and is to be accounted for hereunder, such written returns to be delivered to Licensor at its office in Chicago, Illinois, and Licensee agrees to pay to licensor on or before the 20th day of each calendar month at the office of Licensor at Chicago, Illinois, the hereinbefore stipulated royalties or license fees which may then be due under this agreement on account of all said plasterboard and/or gypsum wallboard manufactured and sold by it and put up and sold by it in bundles during the next preceding calendar month.

9482 7. Licensor, or its duly authorized representative, shall have the right at all reasonable times during business hours to inspect the books of account and records of Licensee referred to in the next preceding

paragraph hereof, including all records of every kind showing the quantity of said plasterboard and gypsum wallboard manufactured and sold by it and the quantity therof put up and sold by it in bundles and the price or prices at which the same was sold, and to make copies thereof and memoranda therefrom; Provided, However, that if at the time of any such examination Licensee shall request it in writing, then such examination shall be made by a certified public accountant agreed upon between the parties hereto, in which event the expense thereof shall be borne equally by both parties. If the parties at any time shall not agree upon the certified public accountant to make such examination, then Licensor shall name three certified public accountants of good standing not directly or indirectly employed by it or in any other way connected with it, and if Licensee shall not accept any one of them, then Licensor shall have the right to make such examination itself.

8. Licensee agrees that all plasterboard or gypsum wallboard manufactured and sold by it embodying the claims of any of said patents and/or applications for letters patent shall be distinctly marked with the words "Patented" and/or "Patent applied for," as the case may be, together with the numbers of any of said patents or applications specified by Licensor, the claims of which may be embodied in said plasterboard or gypsum wallboard, and in connection with said marking Licensee will further mark said board with the words "Licensed under the above letters patent" and/or "Licensed under pending applications for letters patent," as the case may be, which
9483 marking shall be plainly visible. Licensee further agrees that all bundles put up and sold by it embodying the claims of any of said patents numbers 1,696,877, 1,724,740 and 1,730,113 and/or any of said applications serial numbers 329,581 and 296,354 shall be similarly marked together with the numbers of said bundle patents and/or applications.

9. Having regard for the fact that there are or may be certain manufacturers of plaster or gypsum products, jobbers or other wholesale distributors of such products, who do not or may not manufacture gypsum wallboard or plasterboard but who desire or may desire to have gypsum wallboard or plasterboard manufactured for them, it is understood and agreed that Licensee may manufacture for

jobbers (being those who do not manufacture but buy and sell plasterboard or gypsum wallboard in straight cars or in mixed cars with other building material and who do not sell at retail) gypsum wallboard or plasterboard embodying the inventions and improvements set forth and claimed in said letters patent or in any letters patent after the same shall have been issued, granted for or upon any of the said applications and may with the written consent of first party manufacture for any such other manufacturer or other wholesale distributor, gypsum wallboard or plasterboard embodying the said inventions and improvements; Provided, However, that the said license fee or royalty to be paid to Licensor as hereinbefore provided shall be based upon all gypsum wallboard and plasterboard manufactured for and sold and invoiced to such other manufacturer, jobber or wholesale distributor and upon the regular selling price of Licensee of such plasterboard or gypsum wallboard to its regular dealer trade at the time of such sale and invoice, and shall not be based upon the price at which plasterboard or gypsum wallboard is sold and invoiced by Licensee to such other manufacturer, jobber or wholesale distributor. Nothing hereinbefore
9484 contained in this agreement shall be construed to give Licensee the right to manufacture gypsum plasterboard or gypsum wallboard embodying the inventions and improvements set forth and claimed in any of said letters patent or in any letters patent after the same shall have been granted for or upon any of said applications for said other manufacturers or wholesale distributors and to sell the same, without the written consent of Licensor.

10. Licensee covenants and agrees that all of said gypsum plasterboard and gypsum wallboard manufactured and sold by it embodying the inventions and improvements set forth and claimed in any of said Letters Patent or Patents issued upon any of said applications and commonly known in the trade as "seconds" shall be plainly invoiced as "seconds" and shall be plainly marked with a visible red stamp or label firmly fixed on each of said boards showing the word "seconds" in letters at least three inches in height.

11. As one of the considerations for the indivisible and non-exclusive license herein and hereby granted, Licensee hereby acknowledges the validity of said letters patent or of any letters patent which may be granted or issued for or upon said applications, forming the subject-matter of

said license so long as said license shall remain in full force and effect, and agrees that it will not at any time during the existence of said license, directly or indirectly, by itself, through or together with another or others, contest the validity of either or any of said letters patent or the title thereto of Licensor.

12. In the event that either party shall at any time neglect, fail or refuse to keep or perform any of the conditions or agreements herein to be kept by it and
9485 performed, then the other party, at its election, may serve upon the party in default written notice of intention to terminate this license, which notice shall specify the alleged neglect, failure or refusal, and if within thirty (30) days from the date of delivery of said notice the party in default shall not cure the default specified in said notice, then the other party may cancel and terminate this agreement by notifying the party in default in writing of its election so to do, without the necessity of any court action; Provided, However, that neither party shall be relieved thereby from any liability accrued at the time of such termination; and Provided Further, that if the party upon whom said notice is served shall deny that it is in default in whole or in part, as specified therein, then the party serving such notice shall not be privileged to cancel this contract on account of the alleged default specified therein, provided the party upon whom said notice shall have been served shall within said thirty (30) day period perform the agreements and submit the question to arbitration, as in this paragraph hereinafter set forth. In case of any such denial the party upon whom the notice shall have been served shall within said thirty (30) day period state in writing to the other party wherein and in what respect it denies the default specified in said notice and shall at the same time make good any default specified therein which it does not deny and appoint in writing one person as arbiter to arbitrate the question of whether or not it is in default in respect to that which it shall have denied as aforesaid, it being understood, however, that if the question shall be with respect to the amount of royalties or license fees to be paid hereunder, then the Licensee shall first pay or offer to pay the amount of such license fees or royalties which it then admits is due and payable in
9486 accordance with the terms hereof, and the acceptance thereof by the Licensor shall not operate as a

waiver of any of its rights hereunder or of any claim it may have made in any notice served by it upon Licensee. The party so serving said notice shall, after the other party shall have made good any default specified in said notice which it did not deny in writing as aforesaid, including the payment of royalties or license fees, if any, admitted by it to be due and payable hereunder, and within ten (10) days from the date of the appointment of said first arbiter in accordance with the terms hereof, appoint in writing another person as arbiter, and the two persons so appointed shall within ten (10) days or as soon as possible thereafter appoint in writing a third person as arbiter. The three persons so appointed shall, within thirty (30) days from the date of the appointment of said last mentioned arbiter, or as soon as possible thereafter, decide whether or not the party upon whom said notice has been served is in default hereunder with respect to anything contained in said notice. The decision of a majority of the three arbiters so appointed shall constitute a final settlement of the said question and be binding and conclusive upon both the Licensor and the Licensee, and if it shall have been determined by a majority of the said arbiters that the party upon whom said notice was served is in default with respect to anything contained in said notice and the party so found to have been in default shall fail or refuse to comply with the terms of the award or finding made by said arbiters within thirty (30) days from the date such award or finding shall have been made, the party serving said notice may at its election terminate and cancel this agreement in writing. In the event of default hereunder by either party and notice of such default is served by the other party as herein provided; and after service of such notice the party
9487 in default shall cure the same as hereinbefore provided, the same shall constitute a nullification of said notice to the same effect as if said notice had not been served. In case at any time the Licensee shall be adjudged a bankrupt; then the License hereunder shall immediately be and become canceled and terminated, but the Licensor shall not thereby be prevented from collecting all license fees or royalties accrued hereunder at the time of such termination. The waiver of any breach by either party shall not be interpreted as constituting a waiver of any further breach or breaches. Either party may proceed by action to specifically enforce this contract or any of the terms, conditions and covenants thereof by injunction or in such other manner as may be provided by law.

13. Any notice to be given under the terms hereof may be served by the Licensor or the Licensee by mailing the same to the other party hereto, postage prepaid and registered, addressed to any of its officers at its last known principal office, and the deposit of any such notice in the United States mails, postage prepaid and so addressed, shall constitute service of notice hereunder. Any telegraphic notice given under paragraph 2 hereof shall be confirmed in writing in the ordinary course of business.

14. It is understood and agreed that if at any time during the term hereof the Licensee shall, in the judgment of the Licensor, suffer substantial detriment by reason of any infringement on the part of any person or persons of any of said letters patent or of any patent that may be granted upon said applications, under which this license is granted, the Licensor will afford the Licensee such reasonable protection as in the judgment of the Licensor shall be necessary or proper.

If a court of last resort upon final appeal or review
9488 shall decree all the claims of the patents granted for or upon said Roos and Bayer applications invalid or Licensee ~~shall~~ be permanently enjoined from manufacturing plasterboard and gypsum wallboard, the body or core of which is made according to the process set forth and claimed in said Roos and Bayer applications in such manner that they cannot practice in any way any of the inventions set forth in the said applications, and such injunction shall be made final by a court of last resort upon final appeal or review, then from the time the court of last resort upon final appeal or review shall decree that all the claims of the patents granted or issued for or upon said Roos and Bayer applications are invalid, or make such injunction permanent and final, the license fees or royalties to be paid by Licensee hereunder shall be reduced by one per cent (1%) of said selling price, or if a court of last resort upon final appeal or review shall decree that all the claims of said Haggerty and Hite patents are invalid or Licensee shall be permanently enjoined from manufacturing plasterboard and gypsum wallboard embodying the inventions and improvements set forth and claimed in said Haggerty and Hite patents in such manner that they cannot practice in any way any of the inventions set forth in said patents, and such injunction shall be made final by a court of last resort upon final appeal or review, then from the

time the court of last resort upon final appeal or review shall decree all claims of said Haggerty and Hite patents invalid or make said injunction permanent and final, the said license fees or royalties agreed to be paid by Licensee for said Haggerty and Hite patents shall cease and determine.

15. In case Licensor shall, subsequent to the effective date hereof, grant to any other person except Abel
9489 Davis and Eugene Holland, receivers of the Universal Gypsum & Lime Co. or their successors or to the said Universal Gypsum & Lime Co., any license under said patents or applications for letters patent set forth in said Exhibit A and paragraph 4 hereof for the manufacture, sale or use of gypsum plasterboard or gypsum wallboard or bundles thereof, embodying the claims or inventions set forth and claimed in said patents or said applications, or shall grant any right under any such license, upon terms more favorable than those granted hereunder to this Licensee, then it will grant to this Licensee a license on the same terms or extend to it the same right granted to any such other person. This paragraph shall not apply to any license granted on or prior to the effective date hereof, nor shall the same apply to the terms of settlement of any claim of Licensor or provisions with respect to the payment thereof, contained in any such license.

16. The terms "gypsum plasterboard," "gypsum wallboard" and "plasterboard" shall be understood to mean all board made of gypsum, by whatever name called, having the characteristics of gypsum plasterboard or gypsum wallboard, irrespective of the purpose for which the same may be sold or used, and shall include gypsum laths and all other gypsum boards.

17. If at any time after the expiration of two (2) years from January 1, 1930, or such earlier date that Licensee shall make its plant ready to practice the process set forth and claimed in said Roos and Bayer applications in the manufacture of gypsum wallboard or plasterboard, there shall have been invented or come into use any process which shall make the said process of forming a cellular product as set forth and claimed in said Roos and Bayer ap-
9490 plications obsolete or shall displace the same, and the Licensor shall in its own manufacture permanently and wholly abandon the use of the subject-matter of

the claims of said Roos and Bayer applications, it shall notify Licensee in writing thereof, and Licensee may then, upon thirty (30) days' written notice to Licensor, cancel and terminate this License in so far as the same applies to said Roos and Bayer applications or to the patent or patents granted or issued therefor or thereupon, and from the date of such cancellation the royalties or license fees to be paid by Licensee hereunder shall be reduced by one per cent (1%) of its said selling price; Provided, However, that if Licensor shall not in such event permanently and wholly abandon the use of said process but shall only partially abandon the same, then to the extent or degree and for the term that Licensor shall abandon the same in its own manufacture Licensee shall be relieved from the payment of license fees or royalties to the same extent, that is to say, if Licensor shall in such event manufacture and sell any board the core of which is made of gypsum of a particular size, kind or make, or for a particular purpose or use, without the use of said process embodied therein, then if Licensee shall manufacture and sell the same board of the same particular size, kind or make and for the same purpose or use, within the use of said process embodied therein, then Licensee shall not be required to pay royalties or license fees upon such particular board for the term that Licensor shall manufacture and sell the same. "License fees" and "royalties" for the purpose of this paragraph shall mean one per cent (1%) of said selling price. The use by Licensor of any improvement which Licensee has the right to use as set forth in paragraph 18 hereof, or the manufacture of plasterboard or gypsum wallboard without the use of said process for sale only in foreign countries where Licensor has no patented rights in said process, shall not constitute an abandonment of said process or a partial abandonment thereof within the meaning of this paragraph.

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18. If Licensor shall at any time during the existence of this agreement make or obtain any improvement for the formation of the bubble described in the process set forth in said Roos and Bayer applications and/or method of its introduction in the core of plasterboard or gypsum wallboard, and which improvement is covered by the claims of said Roos and Bayer applications, and shall itself use the same in its own manufacture, then so long as Licensee shall continue to pay the license fees or royalties hereinbefore

stipulated, the right, license or privilege herein contained shall be extended to and include the use of said improvement in the manufacture by Licensee of gypsum plasterboard or gypsum wallboard, subject to all of the terms and conditions herein contained, except only that Licensee shall not be required to pay any additional sum, royalty or license fee therefor. It is further understood that if a patent or patents shall be granted or issued for or upon said improvement, then all of the provisions of this agreement, as well as the provision of paragraph 2 hereof reserving the right in Licensor to determine and fix at any time and to change from time to time the minimum price or prices at which Licensee shall sell any gypsum plasterboard or gypsum wallboard manufactured by Licensee and embodying the claims of said patents, shall apply to the improvement set forth and claimed in any patent or patents granted or issued for or upon said improvement. Licensor
9492 will promptly notify Licensee of the general adoption by it of any such improvement in its own manufacture together with such information as it may possess as to the use thereof in the manufacture of plasterboard and gypsum wallboard.

19. Licensee has investigated and fully satisfied itself with respect to the inventions and improvements set forth in said patents and applications for letters patent and the use thereof in its own manufacture, and has executed this agreement without relying upon any representations which may have been made by Licensor with respect thereto. No representations have been made by Licensor not expressly stated in this contract which Licensee shall at any time have any right to rely upon as an inducement for its making this contract or for any result or results to be obtained by Licensee in its own plant by its use of the inventions and improvements set forth and claimed in any of said patents or applications for letters patent.

20. The Licensor agrees at any time during the term hereof to extend to Licensee, upon its written request, an indivisible and non-exclusive license or privilege to use the said process or processes set forth and claimed in said Roos or Bayer applications in the manufacture in its said plants of any other gypsum product not specifically covered by this agreement and in which Licensor shall use the same in its own manufacture and to sell the same. upon the payment to Licensor of one per cent (1%) of the selling price

of Licensee of all of said other gypsum product, whether or not embodying the said process in making the same, manufactured and sold by Licensee and upon the
9493 same terms as set forth herein and subject to all of the conditions hereof, in which event in the agreement for the same there shall be substituted for the words "plasterboard and/or gypsum wallboard" the name of such other product or products. An agreement containing all of said terms and conditions shall be reduced to writing and signed by both parties before the same shall become effective.

21. From the date this contract shall become effective the same shall supersede all prior license agreements at any time made between the parties hereto relating to the subject-matter hereof or relating to any of the patents or applications for letters patent referred to in this agreement; Provided, However, that Licensor shall not be barred or prevented from recovering any claim which may have accrued under any such prior license agreements prior to the time this contract shall become effective, including all payments, royalties or license fees agreed to be paid thereunder by Licensee up to the date this agreement shall go into effect.

22. This license and all of the covenants and agreements hereof shall become effective upon the date Licensor shall receive a conveyance and assignment of said Haggerty and Hite patents to it, pursuant to authority granted by the United States District Court to the receivers of the Universal Gypsum & Lime Co., a Delaware corporation, and to said company, to sell and assign said Haggerty and Hite patents to Licensor, and from the effective date thereof this license and all of the covenants and agreements hereof shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto, but nothing
9494 in this paragraph shall be construed to permit an assignment hereof by Licensee, except as hereinabove specifically provided.

In witness whereof, the parties hereto have caused these presents to be signed by their respective presidents, attested by their respective secretaries and their corporate seals to be hereunto affixed in duplicate the day and year first above written.

[SEAL] UNITED STATES GYPSUM COMPANY

By S. L. AVERY

Its President.

C. F. HENNING,
Witness.

[SEAL] NIAGARA GYPSUM COMPANY

By M. A. REIB

Its President.

E. R. NORTH
Witness.

9495 EXHIBIT "A"

Utzman patent No. 1,330,413. Application filed September 3, 1918, granted February 10, 1920, expires February 10, 1937.

Birdsey patent No. 1,358,508. Application filed January 2, 1920, granted November 9, 1920, expires November 9, 1937.

Utzman patent No. 1,383,249. Application filed August 13, 1918, granted June 28, 1921, expires June 28, 1938.

Birdsey patent No. 1,383,254. Application filed July 29, 1918, granted June 28, 1921, expires June 28, 1938.

Birdsey patent No. 1,383,255. Application filed January 2, 1920, granted June 28, 1921, expires June 28, 1938.

Birdsey patent No. 1,384,298. Application filed August 19, 1920, granted July 12, 1921 expires July 12, 1938.

Birdsey patent No. 1,395,031. Application filed January 2, 1920, granted October 25, 1921, expires October 25, 1938.

Birdsey patent No. 1,395,032. Application filed January 2, 1920, granted October 25, 1921, expires October 25, 1938.

Birdsey patent No. 1,406,967. Application filed January 3, 1921, granted February 21, 1922, expires February 21, 1939.

Birdsey patent No. 1,427,939. Application filed January 3, 1921, granted September 5, 1922, expires September 5, 1939.

Birdsey patent No. 1,428,624. Application filed January 2, 1920, granted September 12, 1922, expires September 12, 1939.

Brookby patent No. 1,489,693. Application filed September 25, 1922, granted April 8, 1924, expires April 8, 1941.

Birdsey patent No. 1,514,827. Application filed October 6, 1921, granted November 11, 1924, expires November 11, 1941.

Birdsey patent No. 1,515,380. Original application filed January 2, 1920, granted November 11, 1924, expires November 11, 1941.

9496 Birdsey patent No. 1,518,243. Application filed September 22, 1922, granted December 9, 1924, expires December 9, 1941.

Birdsey patent No. 1,525,715. Application filed January 2, 1920, granted February 10, 1925, expires February 10, 1942.

Birdsey patent No. 1,526,307. Application filed October 10, 1921, granted February 10, 1925, expires February 10, 1942.

Utzman patent No. 1,540,045. Application filed March 14, 1923, granted June 2, 1925, expires June 2. 1942.

Birdsey patent No. 1,558,459. Application filed October 4, 1922, granted October 27, 1925, expires October 27, 1942.

Birdsey Patent No. 1,561,635. Application filed January 3, 1921, granted November 17, 1925, expires November 17, 1942.

Armstrong patent No. 1,278,821. Application filed January 4, 1918, granted September 17, 1918, expires September 17, 1935.

Armstrong patent No. 1,348,387. Application filed March 15, 1919, granted August 3, 1920, expires August 3, 1937; application for reissue filed June 3, 1922, Serial No. 565,737, reissued January 24, 1928 as Reissue patent No. 16,860.

Armstrong patent No. 1,367,292. Application filed July 12, 1919 granted February 1, 1921, expires February 1, 1938; application for reissue filed June 9, 1922, Serial No. 567,205, reissued May 22, 1928 as Reissue Patent No. 16,969.

Utzman patent No. 1,455,127. Application filed June 14, 1922, granted May 15, 1923, expires May 15, 1940.

Utzman patent No. 1,492,588. Application filed June 14, 1922, granted May 6, 1924, expires May 6, 1941.

Williams patent No. 1,519,180. Application filed August 18, 1922, granted December 16, 1924, expires December 16, 1941.

Armstrong patent No. 1,556,575. Application filed October 1, 1921, granted October 13, 1925, expires October 13, 1942.

Armstrong patent No. 1,399,455. Application filed February 24, 1920, granted December 6, 1921, expires December 6, 1938.

9497 Tyler patent No. 1,417,117. Application filed November 15, 1919, granted May 23, 1922, expires May 23, 1939.

Birdsey patent No. 1,643,801. Application Serial No. 437,062, filed January 13, 1921, granted September 27, 1927, expires September 27, 1944.

Birdsey patent No. 1,650,930. Application Serial No. 506,676, filed October 10, 1921, granted November 29, 1927, expires November 29, 1944.

Birdsey patent No. 1,676,318. Application Serial No. 545,231, filed March 20, 1922, granted July 10, 1928, expires July 10, 1945.

Birdsey patent No. 1,710,915. Application Serial No. 555,627, filed April 19, 1922, granted April 30, 1929, expires April 30, 1946.

Smith patent No. 1,603,158. Application Serial No. 662,359, filed September 12, 1923, granted October 12, 1926, expires October 12, 1943.

Birdsey patent No. 1,666,161. Application Serial No. 737,237, filed September 12, 1924, granted April 17, 1928, expires April 17, 1945.

Utzman patent No. 1,631,108. Application Serial No. 750,224, filed November 17, 1924, granted May 31, 1927, expires May 31, 1944.

Brookby & Absmeier patent No. 1,689,322. Application Serial No. 91, 297, filed March 1, 1926, granted October 30, 1928, expires Oct. 30, 1945.

Armstrong patent No. 1,701,291. Application Serial No. 310,470, filed July 12, 1919, granted February 5, 1929, expires February 5, 1946.

Utzman patent No. 1,638,280. Application Serial No. 374,833, filed April 19, 1920, granted August 9, 1927, expires August 9, 1944.

Armstrong patent No. 1,641,611. Application Serial No. 377,421, filed April 29, 1920, granted September 6, 1927, expires September 6, 1944.

Speer patent No. 1,686,671. Application Serial No. 427,044, filed November 29, 1920, granted October 9, 1928, expires October 9, 1945.

Speer patent No. 1,641,648. Application Serial No. 427,045, filed November 29, 1920, granted September 6, 1927, expires September 6, 1944.

Mehlhope patent No. 1,604,707. Application Serial No. 473,288, filed May 28, 1921, granted October 26, 1926, expires October 26, 1943.

9498 Gustafson patent No. 1,665,168. Application Serial No. 509,366, filed December 2, 1919, renewed October 21, 1921, granted April 3, 1928, expires April 3, 1945.

Kohler, et al patent No. 1,673,944. Application Serial No. 540,412, filed March 2, 1922, granted June 19, 1928, expires June 19, 1945.

Utzman patent No. 1,703,183. Application Serial No. 581,362, filed August 12, 1922, granted February 26, 1929, expires February 26, 1946.

Birdsey patent No. 1,718,890. Application Serial No. 583,795, filed August 23, 1922, granted June 25, 1929, expires June 25, 1946.

Utzman application Serial No. 477,371, filed June 14, 1921, finally allowed April 26, 1929. Patent No. 1,731,116 will issue October 8, 1929.

Knode application Serial No. 590,358. Filed September 25, 1922.

Utzman application Serial No. 581,361. Filed August 12, 1922.

Williams application Serial No. 582,606. Filed August 18, 1922.

Roos application Serial No. 733,197, filed August 20, 1924.

Bayer application Serial No. 661,723, filed September 8, 1923.

Roos application Serial No. 3477, filed January 19, 1925.

Roos application Serial No. 142,155, filed October 16, 1926.

Haggerty patent No. 1,500,452. Application Serial No. 565,433, filed June 2, 1922, granted July 8, 1924.

Hite patent No. 1,230,297. Application Serial No. 115,649, filed August 18,1916, granted June 19, 1917.

9499 *Government's Exhibit No. 13*

LICENSE AGREEMENT

This agreement, executed in duplicate this 25th day of November, 1929, by and between the United States Gypsum Company, an Illinois corporation, of Chicago, Illinois, hereinafter referred to as Licensor, and The American Gypsum Company, an Ohio corporation of Port Clinton, Ohio, hereinafter referred to as Licensee, witnesseth:

Whereas, Licensor is the owner of certain letters patent and applications for letters patent of the United States covering an improved gypsum wallboard and method or process of making the same, together with machines and appliances for the manufacture of said inventions, including among them the Haggerty and Hite patents and the Roos and Bayer applications hereinafter referred to, all of which said patents and applications for letters patent are more specifically set forth in Exhibit A attached hereto and made a part hereof; and

Whereas, Licensor was the owner of all of the right, title and interest in and under Letters Patent of the United States, number 1,029,328 and number 1,034,746, known as the Utzman patents, the last of which expired August 6, 1929, which said Utzman Patents were adjudicated by the United States District Court for the Northern District of

Illinois, Eastern Division, and by the United States Circuit Court of Appeals for the Seventh Circuit, and were decreed by said courts as valid and having been infringed by the defendants named in said suits; and

Whereas, the Birdsey Patent number 1,358,508, mentioned in said Exhibit A, was adjudicated by the United States District Court for the Northern District of Ohio,
9500 and said court decreed that said Birdsey Patent was valid and infringed by the Licensee in said cause by reason of its having made, used and sold plasterboard and/or gypsum wallboard with edges of the character disclosed in said patent, and said District Court ordered a perpetual injunction and accounting against defendant, which cause is now pending on appeal before the United States Circuit Court of Appeals for the Sixth Circuit; and

Whereas, Licensor has a substantial claim against Licensee for damages and profits because and on account of said alleged infringement; and

Whereas, Licensor is the owner of that certain application for United States letters patent filed by Carlisle K. Roos, entitled "Cementitious Material," now pending in the United States Patent Office and covering the process of making a cellular product, which comprises forming a tenacious foam and mixing the foam with a cementitious material, and of certain other applications filed by said Roos covering specific employment of said inventions, and Licensor has heretofore acquired the sole and exclusive rights in the United States of America (when gypsum is used as the main binding material) in that certain application for United States letters patent described in said Exhibit A filed by Erik Christian Bayer, entitled "Methods of Manufacturing Porous Building Materials," and relating to a process broadly similar to that of said first mentioned Roos application, which said Roos and Bayer applications are described and set forth in said Exhibit A; and

Whereas, Licensee desires to include in its manufacture the inventions and improvements set forth and claimed in said Roos and Bayer applications and in those two certain patents known as the Haggerty and Hite patents referred to in said Exhibit A and to obtain a license from Licensor
to make, use and sell the inventions and improve-
9501 ments set forth and claimed in all of said patents and applications for letters patent described in said Exhibit A throughout the full term thereof and Licensor

has agreed to grant such a license to Licensee upon the terms and conditions hereinafter stated;

Now, therefore, in consideration of the sum of One Dollar and other good and valuable considerations, the receipt whereof is hereby acknowledged from each party to the other party, and in consideration of the mutual covenants and agreements hereinafter contained, the parties hereto do hereby agree as follows, to-wit:

1. Licensor agrees promptly to disclose to Licensee all information and formulae which it now has or may obtain relating to the process of making a cellular product through the formation of a tenacious foam and mixing the foam with a cementitious material, as set forth and claimed in said applications for letters patent filed by Carlisle K. Roos and Erik Christian Bayer, in so far as the same is or may be applied to gypsum, and including all information and formulae for the manufacture of gypsum plasterboard and gypsum wallboard embodying the inventions and improvements set forth and claimed in said Roos and Bayer applications, together with a description of the machines or appliances which it now has for making the same. It will assist Licensee to make its plant ready for practicing said process in the manufacture of plasterboard and gypsum wallboard by furnishing without cost to Licensee the advice and instruction of Licensor's experts and information with respect to the purchase and cost of said machines and appliances.

2. Licensor has agreed to and does hereby give and grant unto Licensee an indivisible and non-exclusive right, license and privilege of using the process or processes and making and using the machines and/or inventions set forth and claimed in any and all of said patents and/or applications for letters patent set forth in Exhibit A attached hereto
in the manufacture of gypsum plasterboard and/or
9502 gypsum wallboard at the plants or factories now owned and/or operated by Licensee, or at any other plant or factory hereafter owned and/or operated or controlled by it or any subsidiary, associated or affiliated company, and of manufacturing at any such place or places, selling and using in the United States of America and the territories and possessions thereof gypsum plasterboard or gypsum wallboard manufactured at any such place or places and embodying the inventions and improvements set forth and claimed in said patents and/or applications for letters

patent described in said Exhibit A, for the full term of said letters patent or of any letters patent which may be granted for or upon any of said applications, including any extensions and/or reissues thereof.

It is expressly understood and agreed that the indivisible and non-exclusive right, license and privilege aforesaid is granted upon condition that the Licensor shall have and it hereby reserves the right to determine and fix at any time and to change from time to time during the existence of said patents and so long as said license shall continue, the minimum price or prices at which Licensee shall sell any plasterboard or gypsum wallboard manufactured by Licensee by use of any of the machines or appliances covered by any of said letters patent and which shall embody the inventions and improvements set forth and claimed in any of said patents which are presently issued, or any of said plasterboard or gypsum wallboard manufactured by second parties and which shall embody the inventions and improvements set forth and claimed in either patent number 1,500,452 or patent number 1,230,297, or commencing with the date when a patent shall have been granted or issued for or upon any of the said Roos or Bayer inventions and/or applications any of said plasterboard or gypsum wallboard manufactured by Licensee, the body or
9503 core of which is made according to the process set forth and claimed in any patent granted for or upon any of said Roos or Bayer inventions and/or applications, and in case Licensor shall exercise the right so reserved, it shall first serve written notice of its intention so to do upon Licensee, accompanied with a statement of the minimum price or prices at which Licensee shall sell said gypsum plasterboard or gypsum wallboard, and thereafter shall give to Licensee written or telegraphic notice of any change in such price or prices, and Licensee expressly covenants and agrees that it will not, so long as this agreement shall continue in force and effect and after receipt of such notice given in accordance with the terms and conditions hereof, directly or indirectly, sell or offer for sale any gypsum plasterboard or gypsum wallboard manufactured by it by use of any of the machines or appliances covered by any of said patents and which during the existence thereof shall embody the inventions and improvements set forth and claimed in any of said patents which are presently issued, or any gypsum plasterboard or gypsum wallboard manufactured by second parties and which during the existence

thereof shall embody the inventions and improvements set forth and claimed in either patent number 1,500,452 or patent number 1,230,297, or any gypsum plasterboard or gypsum wallboard manufactured by Licensee after a patent shall have issued upon any of the said Roos or Bayer inventions and/or applications and during the existence thereof, the body or core of which is made according to the process set forth and claimed in any patent granted for or upon any of said inventions and/or applications, at a price or prices less than that stated by Licensor in said
9504 notice or in any such written or telegraphic notice of a change in such price or prices.

Said minimum price shall not be more than that price at which Licensor determines to sell plasterboard or gypsum wallboard embodying the inventions and improvements set forth and claimed in said patents to its own like trade in the same market.

3. Licensee agrees to pay to Licensor in settlement and discharge of said claim and for said disclosures, information and assistance and the agreements of Licensor herein contained, and for the right, license and privilege of using the processes and making and using the machines and/or inventions in the manufacture of plasterboard and gypsum wallboard covered by said patents and applications for letters patent described in said Exhibit A, and for the privilege of manufacturing, using and/or selling plasterboard and gypsum wallboard embodying the inventions and improvements set forth and claimed in said patents and applications for letters patent, an amount (hereinafter for convenience referred to as a license fee or royalty) equivalent to three and one-half per cent (3½%) of the selling price of Licensee of all plasterboard and gypsum wallboard of every kind, whether or not made by the use of said machines and/or embodying the inventions and improvements set forth and claimed in said letters patent or applications for letters patent, manufactured and sold by Licensee between the date hereof and February 10, 1937, the date of the expiration of patent number 1,330,413 mentioned in said Exhibit A, and thereafter an amount equivalent to two per cent (2%) of the selling price of Licensee of all such plasterboard and gypsum wallboard manufactured and
9505 sold by it between February 10, 1937, and July 8, 1941, the date of the expiration of said patent number 1,500,452, and thereafter an amount equivalent to one per cent (1%) of the selling price of Licensee of all such

plasterboard and gypsum wallboard manufactured and sold by it between July 8, 1941, and the date of the expiration of the last to expire of any patent granted or issued for or upon any of the said Roos or Bayer applications; Provided, However, that if no patent shall have been granted or issued for or upon any of said Roos or Bayer applications covering said process referred to in paragraph 1 hereof, within two (2) years from the date hereof, then commencing with the end of said two (2) year period the said license fees or royalties agreed to be paid by Licensee shall be reduced by one per cent (1%) of Licensee's said selling price until such patent shall have been granted or issued for or upon any of said Roos and Bayer applications, at which time Licensee shall again commence to pay the full amount of said license fees or royalties until the date of the expiration of the last to expire of any such patent or patents. If at the time of the execution of this contract Licensee's plant shall not be equipped to practice the process set forth and claimed in said Roos or Bayer applications in the manufacture of plasterboard or gypsum wallboard, then Licensee shall pay as such license fees or royalties two and one-half per cent (2½%) of said selling price between the date hereof and January 1, 1930, or such earlier date as Licensee shall make its plant ready to practice said process in the manufacture of said board, and the payment of three and one-half per cent (3½%) of said selling price and said period of two (2) years in this paragraph mentioned shall commence on January 1, 1930, or such
9506 earlier date as Licensee shall have made its plant ready as aforesaid. The amount of one per cent (1%) of said selling price included in said royalties or license fees in the amount agreed to be paid by Licensee for the use of said Haggerty and Hite patents.

Licensee's selling price shall mean the delivered selling price of Licensee, less freight paid by the customer and less regular cash discounts allowed by Licensee.

In addition to the amounts hereinbefore agreed to be paid by Licensee, Licensee, in further consideration of said license, and in settlement of said claim, shall pay to Licensor an amount hereinafter referred to as a license fee or royalty equivalent to one and one-half per cent (1½%) of the selling price of Licensee of all such plasterboard and/or gypsum wallboard manufactured and sold by it after the date hereof and until said one and one-half per cent (1½%) of said selling price shall have aggregated the fixed sum

hereinafter in this paragraph set forth. It is understood and agreed that if prior to the expiration of said license granted in paragraph 2 hereof Licensee shall not have paid to Licensor the said fixed sum over and above said other license fees or royalties, then Licensee shall from the date of the expiration of said license pay to Licensor five per cent (5%) of the selling price of Licensee of all plasterboard and/or gypsum wallboard manufactured and sold by it until said fixed sum shall have been fully paid and satisfied. The fixed sum mentioned in this paragraph shall mean an amount of money to be determined as follows: Within thirty (30) days from the date hereof Licensor's auditor, or, if Licensee requests it, then a certified public accountant not otherwise employed by Licensor, shall make an audit of Licensee's books as to the quantity and
9507 prices of plasterboard and gypsum wallboard of all kinds sold by Licensee between the 29th day of July, 1926, and the date hereof, and shall make a certified report thereof. A sum equivalent to five per cent (5%) of Licensee's selling price of all plasterboard and gypsum wallboard of all kinds sold by Licensee between the 29th day of July, 1926, and the date hereof, as shown by said report of audit, shall be the principal sum, to which principal sum there shall be added the sum of Fifty Thousand Dollars ($50,000.00) as compensation for infringement of patents prior to July 29, 1926. The said principal sum plus said sum of Fifty Thousand Dollars ($50,000.00) shall be the amount herein referred to as said fixed sum and the term "fixed sum" wherever used herein shall mean the said principal sum plus said sum of Fifty Thousand Dollars ($50,000.00). If a certified public accountant is employed to make said audit, then the expense thereof shall be borne by Licensee.

It is expressly understood and agreed that this contract is executed without prejudice to Licensor to assert its said claim against Licensee for infringement of its said patents in case for any reason this contract shall not remain in force until February 10, 1937, and Licensee shall not pay to Licensor all of said royalties or license fees agreed to be paid by it up to said last mentioned date, and in addition thereto said one and one-half per cent (1½%) of said selling price until said fixed sum shall have been fully paid in accordance with the terms hereof, and it is further agreed that the claim of Licensor against Licensee for said infringement is not settled or discharged by the execution of this instrument but shall only be settled and discharged

by the full performance of this contract by Licensee up to February 10, 1937, and the payment to Licensor of all of said royalties or license fees up to said last mentioned date, including said additional one and one-half per cent
9508 (1½%) of said selling price until said fixed sum shall have been fully paid. In case of the termination of this contract at any time prior to February 10, 1937, for any reason, or in the event of the failure of Licensee to make full payment to Licensor of all of said royalties or license fees up to said last mentioned date, including said one and one-half per cent (1½%) of said selling price until said fixed sum is fully paid in the manner herein specified, Licensor shall have the same right which it originally had against Licensee before the execution of this agreement or the execution of any license agreement between Licensee and Licensor with respect to any of said patents, to recover of and from Licensee the full amount of its said claim for damages for infringement of its said patents, and nothing herein contained shall prevent the recovery by Licensor of all of its damages for such infringement against Licensee according to the full measure of damages allowed in such cases the same as if this contract had never been made, less only such sums as shall have been paid by Licensee to Licensor since the date hereof on account of said additional one and one-half per cent (1½%) of said selling price in reduction of said fixed sum, in either of which events Licensee shall pay to Licensor the balance of said fixed sum then remaining unpaid in part payment of its said claim for damages, it being understood that in no event shall the recovery from Licensee in such case be less than the amount of said fixed sum then remaining unpaid. Upon the payment to Licensor of all of said royalties or license fees up to February 10, 1937, plus said fixed sum at the time and in the manner herein specified, then the said claim of Licensor against Licensee for infringement of its said patents shall thereupon be and become fully settled, discharged and satisfied.

4. It is further agreed that so long as the license
9509 provided for in paragraph 2 hereof shall remain in force between the parties hereto, or in case the license granted under paragraph 2 hereof shall expire before the expiration of the patents specifically described in this paragraph, and the said license granted under paragraph 2 shall continue in force between the parties hereto for the full term of the last to expire of any of said patents de-

scribed in said Exhibit A, or of any patent or patents granted for or upon any applications described in said Exhibit A, then until the expiration of the patents specifically described in this paragraph, Licensor does hereby give and grant unto the Licensee an indivisible and non-exclusive right, license and privilege of making and using the inventions set forth and claimed in those certain patents known as the Birdsey Plasterboard Bundle Patent number 1,696,877, dated December 25, 1928, Utzman Patent number 1,724,740 dated August 13, 1929, Birdsey Patent number 1,730,113 dated October 1, 1929, and applications for letters patent serial numbers 329,581 filed December 31, 1928, and 296,354 filed July 30, 1928, and any patent which may be granted for or upon said applications, including any extensions and/or reissues thereof, at the plants or factories now owned or operated by Licensee or at any other plant or factory hereafter owned and/or operated and controlled by Licensee or any subsidiary, associated or affiliated company of Licensee, and of selling or using bundles of plasterboard and/or gypsum wallboard put up or bundled by Licensee at any such place or places according to the claims set forth and claimed in the said patents and applications for letters patent in this paragraph described, upon the terms and conditions hereinafter stated.

Licensee agrees to pay to Licensor for the right, license and privilege of making, using or selling the inventions set forth and claimed in said patents and applications in the next preceding paragraph described, in addition to the sums hereinabove set forth, an amount (hereinafter referred to as a license fee or royalty) equivalent to ten cents (10¢) per one thousand (1,000) square feet of plasterboard and/or gypsum wallboard which is sold by Licensee in bundles of any kind, whether or not the bundles shall be made according to the claims set forth and claimed in said patents, which said license fee or royalty shall be payable at the times and in accordance with the terms of paragraph 6 hereof. The term "bundle" shall not include unbundled material wired or strapped for purpose of transportation or unbundled material shipped for export or coastwise trade in fiber, wooden or other crates.

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5. It is expressly understood and agreed that the license herein granted shall be personal to the Licensee, and that the same or any right herein or thereunder shall not be sold or assigned or transferred without the written consent of Licensor, or transferred by operation of law; Pro-

vided, However, that the same may be assigned by Licensee to any company acquiring all the assets and business or all of the capital stock of Licensee, on condition that Licensee shall first obtain an agreement in writing from any such assignee agreeing to assume all of the obligations of Licensee under this agreement and to be bound by all of the terms and conditions hereof and shall deliver such agreement to Licensor. Licensee agrees not to sell all of its assets and business or all of its capital stock or to transfer and convey its plasterboard and/or wallboard business, or its assets used in connection therewith, without requiring the purchaser or purchasers thereof to assume, in writing, all of the obligations of Licensee hereunder, including the assumption of the claim which Licensor has against Licensee for damages for infringement of its said patents and the agreements in settlement and discharge thereof, as in this contract contained, and to agree to be bound
9511 . by all of the terms and conditions of this contract, and deliver such agreement to Licensor.

It is expressly understood that Licensee shall not discontinue its business of manufacturing and selling plasterboard and/or gypsum wallboard until Licensor shall have received the full amount of said license fees or royalties agreed to be paid by Licensee hereunder for the use of all of said patents until February 10, 1937, plus the full payment of said fixed sum in the manner and upon the payments as hereinabove set forth.

6. Licensee agrees to keep separate, full and accurate books of account and records showing the exact quantity of all plasterboard and gypsum wallboard manufactured and sold by it, as well as a separate record of all plasterboard and/or gypsum wallboard sold by it in bundles, and agrees that on or before the twentieth day of each calendar month, it will render unto Licensor true written returns verified under oath by an officer or other agent of Licensee, setting forth the quantity of all plasterboard and/or gypsum wallboard manufactured and sold by it during the preceding calendar month and the quantity thereof put up and sold by it in bundles, together with the price or prices at which the same was sold and is to be accounted for hereunder, such written returns to be delivered to Licensor at its office in Chicago, Illinois, and Licensee agrees to pay to Licensor on or before the 20th day of each calendar month at the office of Licensor at Chicago, Illinois, the hereinbefore stipulated royalties or license fees which may then be

due under this agreement on account of all said plasterboard and/or gypsum wallboard manufactured and sold by it and put up and sold by it in bundles during the next preceding calendar month.

7. Licensor, or its duly authorized representative, shall have the right at all reasonable times during business hours to inspect the books of account and records of Licensee referred to in the next preceding paragraph hereof, including all records of every kind showing the quantity of said plasterboard and gypsum wallboard manufactured and sold by it and the quantity thereof put up and sold by it in bundles and the price or prices at which the same was sold, and to make copies thereof and memoranda therefrom; Provided, However, that if at the time of any such examination Licensee shall request it in writing, then such examination shall be made by a certified public accountant agreed upon between the parties hereto, in which event the expense thereof shall be borne equally by both parties. If the parties at any such time shall not agree upon the certified public accountant to make such examination, then Licensor shall name three certified public accountants of good standing not directly or indirectly employed by it or in any other way connected with it, and if Licensee shall not accept any one of them, then Licensor shall have the right to make such examination itself.

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8. Licensee agrees that all plasterboard or gypsum wallboard manufactured and sold by it embodying the claims of any of said patents and/or applications for letters patent shall be distinctly marked with the words "Patented" and/or "Patent Applied for," as the case may be, together with the numbers of any of said patents or applications specified by Licensor, the claims of which may be embodied in said plasterboard or gypsum wallboard, and in connection with said marking Licensee will further mark said board with the words "Licensed Under the Above Letters Patent" and/or "Licensed Under Pending Applications for Letters Patent," as the case may be, which marking shall be plainly visible. Licensee further agrees that all bundles put up and sold by it embodying the claims of any of said patents numbers 1,696,877, 1,724,740 and 1,730,113 and/or any of said applications serial numbers 329,581 and 296,354 shall be similarly marked together with the numbers of said bundle patents and/or applications.

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9. Having regard for the fact that there are or may be certain manufacturers of plaster or gypsum products, jobbers or other wholesale distributors of such products, who do not or may not manufacture gypsum wallboard or plasterboard but who desire or may desire to have gypsum wallboard or plasterboard manufactured for them, it is understood and agreed that Licensee may manufacture for jobbers (being those who do not manufacture but buy and sell plasterboard or gypsum wallboard in straight cars or in mixed cars with other building material and who do not sell at retail) gypsum wallboard or plasterboard embodying the inventions and improvements set forth and claimed in said letters patent or in any letters patent after the same shall have been issued, granted for or upon any of the said applications and may with the written consent of first party manufacture for any such other manufacturer or other wholesale distributor, gypsum wallboard or plasterboard embodying the said inventions and improvements; Provided, However, that the said license fee or royalty to be paid to Licensor as hereinbefore provided shall be based upon all gypsum wallboard and plasterboard manufactured for and sold and invoiced to such other manufacturer, jobber or wholesale distributor and upon the regular selling price of Licensee of such plasterboard or gypsum wallboard to its regular dealer trade at the time of such sale and invoice, and shall not be based upon the price at which plasterboard or gypsum wallboard is sold and invoiced by Licensee to such other manufacturer, jobber or wholesale distributor. Nothing hereinbefore contained in this agreement shall be construed to give Licensee the right to manufacture gypsum plasterboard or gypsum wallboard embodying the inventions and improvements set forth
9514 and claimed in any of said letters patent or in any letters patent after the same shall have been granted for or upon of said applications for said other manufacturers or wholesale distributors and to sell the same, without the written consent of Licensor.

10. Licensee covenants and agrees that all of said gypsum plasterboard and gypsum wallboard manufactured and sold by it embodying the inventions and improvements set forth and claimed in any of said letters patent or patents issued upon any of said applications and commonly known in the trade as "Seconds" shall be plainly invoiced as "Seconds" and shall be plainly marked with a visible red stamp or label firmly fixed on each of said boards showing the word "Seconds" in letters at least three inches in height.

11. As one of the considerations for the indivisible and non-exclusive license herein and hereby granted, Licensee hereby acknowledges the validity of said letters patent or of any letters patent which may be granted or issued for or upon said applications, forming the subject-matter of said license so long as said license shall remain in full force and effect, and agrees that it will not at any time during the existence of said license, directly or indirectly, by itself, through or together with another or others, contest the validity of either or any of said letters patent or the title thereto of Licensor.

12. In the event that either party shall at any time neglect, fail or refuse to keep or perform any of the conditions or agreements herein to be kept by it and performed, then the other party, at its election, may serve upon the
9515 party in default written notice of intention to terminate this license, which notice shall specify the alleged neglect, failure or refusal, and if within thirty (30) days from the date of delivery of said notice the party in default shall not cure the default specified in said notice, then the other party may cancel and terminate this agreement by notifying the party in default in writing of its election so to do, without the necessity of any court action; Provided, however, that neither party shall be relieved thereby from any liability accrued at the time of such termination; and Provided Further, that if the party upon whom said notice is served shall deny that it is in default in whole or in part, as specified therein, then the party serving such notice shall not be privileged to cancel this contract on account of the alleged default specified therein, provided the party upon whom said notice shall have been served shall within said thirty (30) day period perform the agreements and submit the question to arbitration, as in this paragraph hereinafter set forth. In case of any such denial the party upon whom the notice shall have been served shall within said thirty (30) day period state in writing to the other party wherein and in what respect it denies the default specified in said notice and shall at the same time make good any default specified therein which it does not deny, and appoint in writing one person as arbiter to arbitrate the question of whether or not it is in default in respect to that which it shall have denied as aforesaid, it being understood, however, that if the question shall be with respect to the amount of royalties or license fees to be paid hereunder, then the Licensee shall

first pay or offer to pay the amount of such license
9516 fees or royalties which it then admits is due and payable in accordance with the terms hereof, and the acceptance thereof by the Licensor shall not operate as a waiver of any of its rights hereunder or of any claim it may have made in any notice served by it upon Licensee. The party so serving said notice shall, after the other party shall have made good any default specified in such notice which it did not deny in writing as aforesaid, including the payment of royalties or license fees, if any, admitted by it to be due and payable hereunder, and within ten (10) days from the date of the appointment of said first arbiter in accordance with the terms hereof, appoint in writing another person as arbiter, and the two persons so appointed shall within ten (10) days or as soon as possible thereafter appoint in writing a third person as arbiter. The three persons so appointed shall, within thirty (30) days from the date of the appointment of said last mentioned arbiter, or as soon as possible thereafter, decided whether or not the party upon whom said notice has been served is in default hereunder with respect to anything contained in said notice. The decision of a majority of the three arbiters so appointed shall constitute a final settlement of the said question and be binding and conclusive upon both the Licensor and the Licensee, and if it shall have been determined by a majority of the said arbiters that the party upon whom said notice was served is in default with respect to anything contained in said notice and the party
so found to have been in default shall fail or refuse
9517 to comply with the terms of the award or finding made by said arbiters within thirty (30) days from the date such award or finding shall have been made, the party serving said notice may at its election terminate and cancel this agreement in writing. In the event of default hereunder by either party and notice of such default is served by the other party as herein provided, and after service of such notice the party in default shall cure the same as hereinbefore provided the same shall constitute a nullification of said notice to the same effect as if said notice had not been served. In case at any time the Licensee shall be adjudged a bankrupt, the license hereunder shall immediately be and become canceled and terminated, but the Licensor shall not thereby be prevented from collecting all license fees or royalties accrued hereunder at the time of such termination. The waiver of any breach by either party shall not be interpreted as constituting a

waiver of any further breach or breaches. Either party may proceed by action to specifically enforce this contract or any of the terms, conditions and covenants thereof by injunction or in such other manner as may be provided by law.

13. Any notice to be given under the terms hereof may be served by the Licensor or the Licensee by mailing the same to the other party hereto, postage prepaid and registered, addressed to any of its officers at its last known principal office, and the deposit of any such notice in the United States mails, postage prepaid and so addressed, shall constitute service of notice hereunder. Any telegraphic notice given under paragraph 2 hereof shall be confirmed in writing in the ordinary course of business.

14. It is understood and agreed that if at any time during the term hereof the Licensee shall, in the judgment of the Licensor, suffer substantial detriment by reason 9518 of any infringement on the part of any person or persons of any of said letters patent or of any patent that may be granted upon said applications, under which this license is granted, the Licensor will afford the Licensee such reasonable protection as in the judgment of the Licensor shall be necessary or proper.

If a court of last resort upon final appeal or review shall decree all the claims of the patents granted for or upon said Roos and Bayer applications invalid or Licensee shall be permanently enjoined from manufacturing plasterboard and gypsum wallboard, the body or core of which is made according to the process set forth and claimed in said Roos and Bayer applications in such manner that they cannot practice in any way any of the inventions set forth in the said applications, and such injunction shall be made final by a court of last resort upon final appeal or review, then from the time the court of last resort upon final appeal on review shall decree that all the claims of the patents granted or issued for or upon said Roos and Bayer applications are invalid or make such injunction permanent and final, the license fees or royalties to be paid by Licensee hereunder shall be reduced by one per cent (1%) of said selling price, or if a court of last resort upon final appeal or review shall decree that all the claims of said Haggerty and Hite patents are invalid or Licensee shall be permanently enjoined from manufacturing plasterboard and gypsum wallboard embodying the inventions and improvements

set forth and claimed in said Haggerty and Hite patents in such manner that they cannot practice in any way any of the inventions set forth in said patents, and such injunction shall be made final by a court of last resort upon final appeal or review, then from the time the court of last resort upon final appeal or review shall decree all claims of said Haggerty and Hite patents invalid or make said injunction permanent and final, the said license fees or royalties agreed to be paid by Licensee for said Haggerty
9519 and Hite patents shall cease and determine.

15. In case Licensor shall, subsequent to the effective date hereof, grant to any other person except Abel Davis and Eugene Holland, receivers of the Universal Gypsum & Lime Co. or their successors or to the said Universal Gypsum & Lime Co., any license under said patents or applications for letters patent set forth in said Exhibit A and paragraph 4 hereof for the manufacture, sale or use of gypsum plasterboard or gypsum wallboard or bundles thereof, embodying the claims or inventions set forth and claimed in said patents or said applications, or shall grant any right under any such license, upon terms more favorable than those granted hereunder to this Licensee, then it will grant to this Licensee a license on the same terms or extend to it the same right granted to any such other person. This paragraph shall not apply to any license granted on or prior to the effective date hereof, nor shall the same apply to the terms of settlement of any claim of Licensor or provisions with respect to the payment thereof, contained in any such license.

16. The terms "gypsum plasterboard," "gypsum wallboard" and "plasterboard" shall be understood to mean all board made of gypsum, by whatever name called, having the characteristics of gypsum plasterboard or gypsum wallboard, irrespective of the purpose for which the same may be sold or used, and shall include gypsum laths and all other gypsum boards.

17. If at any time after the expiration of two (2) years from January 1, 1930, or such earlier date that Licensee shall make its plant ready to practice the process set forth and claimed in said Roos and Bayer applications in the manufacture of gypsum wallboard or plasterboard, there shall have been invented or come into use any process which shall make the said process of forming a cellular

product as set forth and claimed in said Roos and
9520 Bayer applications obsolete or shall displace the same, and the Licensor shall in its own manufacture permanently and wholly abandon the use of the subject-matter of the claims of said Roos and Bayer applications, it shall notify Licensee in writing thereof, and Licensee may then, upon thirty (30) days' written notice to Licensor, cancel and terminate this license in so far as the same applies to said Roos and Bayer applications or to the patent or patents granted or issued therefor or thereupon, and from the date of such cancellation the royalties or license fees to be paid by Licensee hereunder shall be reduced by one per cent (1%) of its said selling price; Provided, however, that if Licensor shall not in such event permanently and wholly abandon the use of said process but shall only partially abandon the same, then to the extent or degree and for the term that Licensor shall abandon the same in its own manufacture Licensee shall be relieved from the payment of license fees or royalties to the same exfent, that is to say, if Licensor shall in such event manufacture and sell any board the core of which is made of gypsum of a particular size, kind or make, or for a particular purpose or use, without the use of said process embodied therein, then if Licensee shall manufacture and sell the same board of the same particular size, kind or make and for the same purpose or use, without the use of said process embodied therein, then Licensee shall not be required to pay royalties or license fees upon such particular board for the term that Licensor shall manufacture and sell the same. "License fees" and "royalties" for the purpose of this paragraph shall mean one per cent (1%) of said selling price. The use by Licensor of any improvement which Licensee has the right to use as set forth in paragraph 18 hereof, or the manufacture of plasterboard or gypsum wallboard without the use of said process for
sale only in foreign countries where Licensor has no
9521 patented rights in said process, shall not constitute an abandonment of said process or a partial abandonment thereof within the meaning of this paragraph.

18. If Licensor shall at any time during the existence of this agreement make or obtain any improvement for the formation of the bubble described in the process set forth in said Roos and Bayer applications and/or method of its introduction in the core of plasterboard or gypsum wallboard, and which improvement is covered by the claims of

said Roos and Bayer applications, and shall itself use the same in its own manufacture, then so long as Licensee shall continue to pay the license fees or royalties hereinbefore stipulated the right, license or privilege herein contained shall be extended to and include the use of said improvement in the manufacture by Licensee of gypsum plasterboard or gypsum wallboard, subject to all of the terms and conditions herein contained, except only that Licensee shall not be required to pay any additional sum, royalty or license fee therefor. It is further understood that if a patent or patents shall be granted or issued for or upon said improvement, then all of the provisions of this agreement, as well as the provision of paragraph 2 hereof reserving the right in Licensor to determine and fix at any time and to change from time to time the minimum price or prices at which Licensee shall sell any gypsum plasterboard or gypsum wallboard manufactured by Licensee and embodying the claims of said patents, shall apply to the improvement set forth and claimed in any patent or patents granted or issued for or upon said improvement. Licensor will promptly notify Licensee of the general adoption by it of any such improvement in its own manufacture, together with such information as it may possess as to the use thereof in the manufacture of plasterboard and gypsum wallboard.

9522 19. Licensee has investigated and fully satisfied itself with respect to the inventions and improvements set forth in said patents and applications for letters patent and the use thereof in its own manufacture, and has executed this agreement without relying upon any representations which may have been made by Licensor with respect thereto. No representations have been made by Licensor not expressly stated in this contract which Licensee shall at any time have any right to rely upon as an inducement for its making this contract or for any result or results to be obtained by Licensee in its own plant by its use of the inventions and improvements set forth and claimed in any of said patents or applications for letters patent.

20. The Licensor agrees at any time during the term hereof to extend to Licensee, upon its written request, an indivisible and non-exclusive license or privilege to use the said process or processes set forth and claimed in said Roos or Bayer applications in the manufacture in its said plants of any other gypsum product not specifically covered by this agreement and in which Licensor shall use the same in its own manufacture and to sell the same, upon the pay-

ment to Licensor of one per cent (1%) of the selling price of Licensee of all of said other gypsum product, whether or not embodying the said process in making the same, manufactured and sold by Licensee and upon the same terms as set forth herein and subject to all of the conditions hereof, in which event in the agreement for the same there shall be substituted for the words "plasterboard and/or gypsum wallboard" the name of such other product or products. An agreement containing all of said terms and conditions shall be reduced to writing and signed by both parties before the same shall become effective.

21. This license and all of the covenants and agree-
9523 ments hereof shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto, but nothing in this paragraph shall be construed to permit an assignment hereof by Licensee, except as hereinabove specifically provided.

In witness whereof, the parties hereto have caused these presents to be signed by their respective presidents, attested by their respective secretaries and their corporate seals to be hereunto affixed in duplicate the day and year first above written.

UNITED STATES GYPSUM COMPANY
By S. L. AVERY
Its President.

ATTEST:
R. G. BEAR
Secretary.

THE AMERICAN GYPSUM COMPANY
By JNO. A. KLING
Chairman.

ATTEST:
J. B. DAVIS
Secretary.

Accepted Jobbers: Toledo Plaster & Supply Co, The Cleveland Gypsum Co, Fairmount Wall Plaster Co, Abbey Co, Wyman Allen, 10% discount of minimum.
S. L. A.

9524 EXHIBIT "A"

Utzman patent No. 1,330,413. Application filed September 3, 1918, granted February 10, 1920, expires February 10, 1937.

Birdsey patent No. 1,358,508. Application filed January 2, 1920, granted November 9, 1920, expires November 9, 1937.

Utzman patent No. 1,383,249. Application filed August 13, 1918, granted June 28, 1921, expires June 28, 1938.

Birdsey patent No. 1,383,254. Application filed July 29, 1918, granted June 28, 1921, expires June 28, 1938.

Birdsey patent No. 1,383,255. Application filed January 2, 1920, granted June 28, 1921, expires June 28, 1938.

Birdsey patent No. 1,384,298. Application filed August 19, 1920, granted July 12, 1921, expires July 12, 1938.

Birdsey patent No. 1,395,031. Application filed January 2, 1920, granted October 25, 1921, expires October 25, 1938.

Birdsey patent No. 1,395,032. Application filed January 2, 1920, granted October 25, 1921, expires October 25, 1938.

Birdsey patent No. 1,406,967. Application filed January 3, 1921, granted February 21, 1922, expires February 21, 1939.

Birdsey patent No. 1,427,939. Application filed January 3, 1921, granted September 5, 1922, expires September 5, 1939.

Birdsey patent No. 1,428,624. Application filed January 2, 1920, granted September 12, 1922, expires September 12, 1939.

Brookby patent No. 1,489,693. Application filed September 25, 1922, granted April 8, 1924, expires April 8, 1941.

Birdsey patent No. 1,514,827. Application filed October 6, 1921, granted November 11, 1924, expires November 11, 1941.

Birdsey patent No. 1,515,380. Original application filed January 2, 1920, granted November 11, 1924, expires November 11, 1941.

9525 Birdsey patent No. 1,518,243. Application filed September 22, 1922, granted December 9, 1924, expires December 9, 1941.

Birdsey patent No. 1,525,715. Application filed January 2, 1920, granted February 10, 1925, expires February 10, 1942.

Birdsey patent No. 1,526,307. Application filed October 10, 1921, granted February 10, 1925, expires February 10, 1942.

Utzman patent No. 1,540,045. Application filed March 14, 1923, granted June 2, 1925, expires June 2, 1942.

Birdsey patent No. 1,558,459. Application filed October 4, 1922, granted October 27, 1925, expires October 27, 1943.

Birdsey patent No. 1,561,635. Application filed January 3, 1921, granted November 17, 1925, expires November 17, 1942.

Armstrong patent No. 1,278,821. Application filed January 4, 1918, granted September 17, 1918, expires September 17, 1935.

Armstrong patent No. 1,348,387. Application filed March 15, 1919, granted August 3, 1920, expires August 3, 1937; application for reissue filed June 3, 1922, Serial No. 565,737, reissued January 24, 1928 as Reissue patent No. 16,860.

Armstrong patent No. 1,367,292. Application filed July 12, 1919, granted February 1, 1921, expires February 1, 1938; application for reissue filed June 9, 1922, Serial No. 567,205, Reissued May 22, 1928 as Reissue Patent No. 16,969.

Utzman patent No. 1,455,127. Application filed June 14, 1922, granted May 15, 1923, expires May 15, 1940.

Utzman patent No. 1,492,588. Application filed June 14, 1922, granted May 6, 1924, expires May 6, 1941.

Williams patent No. 1,519,180. Application filed August 18, 1922, granted December 16, 1924, expires December 16, 1941.

Armstrong patent No. 1,556,575. Application filed October 1, 1921, granted October 13, 1925, expires October 13, 1942.

Armstrong patent No. 1,399,455. Application filed February 24, 1920, granted December 6, 1921, expires December 6, 1938.

9526 Tyler patent No. 1,417,117. Application filed November 15, 1919, granted May 23, 1922, expires May 23, 1939.

Birdsey patent No. 1,643,801. Application Serial No. 437,062, filed January 13, 1921, granted September 27, 1927, expires September 27, 1944.

Birdsey patent No. 1,650,930. Application Serial No. 506,676, filed October 10, 1921, granted November 29, 1927, expires November 29, 1944.

Birdsey patent No. 1,676,318. Application Serial No. 545,231, filed March 20, 1922, granted July 10, 1928, expires July 10, 1945.

Birdsey patent No. 1,710,915. Application Serial No. 555,627, filed April 19, 1922, granted April 30, 1929, expires April 30, 1946.

Smith patent No. 1,603,158. Application Serial No. 662,359, filed September 12, 1923, granted October 12, 1926, expires October 12, 1943.

Birdsey patent No. 1,666,161. Application Serial No. 737,237, filed September 12, 1924, granted April 17, 1928, expires April 17, 1945.

Utzman patent No. 1,631,108. Application Serial No. 750,224, filed November 17, 1924, granted May 31, 1927, expires May 31, 1944.

Brookby & Absmeier patent No. 1,689,322. Application Serial No. 91,297, filed March 1, 1926, granted October 30, 1928, expires October 30, 1945.

Armstrong patent No. 1,701,291. Application Serial No. 310,470, filed July 12, 1919, granted February 5, 1929, expires February 5, 1946.

Utzman patent No. 1,638,280. Application Serial No. 374,833, filed April 19, 1920, granted August 9, 1927, expires August 9, 1944.

Armstrong patent No. 1,641,611. Application Serial No. 377,421, filed April 29, 1920, granted September 6, 1927, expires September 6, 1944.

Speer patent No. 1,686,671. Application Serial No. 427,044, filed November 29, 1920, granted October 9, 1928, expires October 9, 1945.

Speer patent No. 1,641,648. Application Serial No. 427,045, filed November 29, 1920, granted September 6, 1927, expires September 6, 1944.

Mehlhope patent No. 1,604,707. Application Serial No. 473,288, filed May 28, 1921, granted October 26, 1926, expires October 26, 1943.

9527 Gustafson patent No. 1,665,168. Application Serial No. 509,366, filed December 2, 1919, renewed October 21, 1921, granted April 3, 1928, expires April 3, 1945.

Kohler, et al patent No. 1,673,944. Application Serial No. 540,412, filed March 2, 1922, granted June 19, 1928, expires June 19, 1945.

Utzman patent No. 1,703,183. Application Serial No. 581,362, filed August 12, 1922, granted February 26, 1929, expires February 26, 1946.

Birdsey patent No. 1,718,890. Application Serial No. 583,795, filed August 23, 1922, granted June 25, 1929, expires June 25, 1946.

Utzman application Serial No. 477,371, filed June 14, 1921, finally allowed April 26, 1929. Patent No. 1,731,116, will issue October 8, 1929.

Knode application Serial No. 590,358. Filed September 25, 1922.

Utzman application Serial No. 581,361. Filed August 12, 1922.

Williams application Serial No. 582,606. Filed August 18, 1922.

Roos application Serial No. 733,197, filed August 20, 1924.

Bayer application Serial No. 661,723, filed September 8, 1923.

Roos application Serial No. 3,477, filed January 19, 1925.

Roos application Serial No. 142,155, filed October 16, 1926.

Haggerty patent No. 1,500,452. Application Serial No. 565,433, filed June 2, 1922, granted July 8, 1924.

Hite patent No. 1,230,297. Application Serial No. 115,649, filed August 18, 1916, granted June 19, 1917.

9528 *Government's Exhibit No. 14*

ASSIGNMENT AND BILL OF SALE

This Agreement made at Port Clinton, Ohio, this 12th day of April, 1939, by and between The American Gypsum Company, an Ohio corporation (hereinafter called the "Grantor"), and The Celotex Corporation, a Delaware corporation, (hereinafter called the "Grantee"), witnesseth:

Whereas, in pursuance of a plan of complete liquidation of the Grantor it is the desire of the Grantor to distribute all the property of the Grantor to its sole stockholder (the Grantee herein) in complete cancellation of all the capital stock of the Grantor;

Now, therefore, in consideration of the premises and the complete cancellation of all the capital stock of the Grantor (consisting of 4,000 shares of preferred stock of the par value of $100 each and 4,697 shares of common stock of the par value of $100 each) IT IS COVENANTED AND AGREED by and between the parties hereto as follows:

1. For value received the Grantor has sold, conveyed, assigned, transferred, set over and delivered, and by these presents does sell, convey, assign, transfer, set over and deliver, to the Grantee, all the assets, business, good will, effects and property of the Grantor, real, personal and mixed, tangible and intangible, of every kind, nature and description and wheresoever situate, including particularly but not exclusively any and all property of every kind, nature and description held in trust by or in the possession of any other person, persons or corporation whatsoever, for the benefit of the Grantor or in which the Grantor has any right, claim or interest of any kind, directly or indirectly, to be the absolute property forever of the Grantee, and including particularly but not exclusively all the right, title and interest of the Grantor in and to the license granted to the Grantor in and by the license agreement between United States Gypsum Company, an Illinois corporation, and the Grantor, dated November 25, 1929.

9529 2. The Grantor at any time and from time to time upon the request of the Grantee shall forthwith execute and deliver such instruments of assignment, transfer, conveyance, endorsement, direction or authorization, as will be sufficient, requisite or advisable to vest in the

Grantee the full and complete absolute legal and equitable title in and to all assets, business, good will, effects and property sold and transferred or intended to be sold and transferred hereunder, it being understood, however, that this agreement shall be, and the same is hereby declared to be, in all respects sufficient to, and the same does hereby, sell, convey, transfer, assign and set over unto the Grantee, full, absolute and complete title in and to all assets, business, good will, effects and property of the Grantor; provided that nothing in this paragraph contained shall be deemed to prevent the dissolution of the Grantor at any time in accordance with the laws of the State of Ohio.

3. The Grantee hereby agrees to assume all the liabilities of the Grantor as shown on its balance sheet of even date herewith and hereby agrees to assume all of the obligations of the Grantor as Licensee under its above mentioned agreement with United States Gypsum Company, and hereby assumes the claim which said United States Gypsum Company has against the Grantor for damages for infringement of said United States Gypsum Company's patents and the agreements in settlement and discharge thereof as in said agreement contained, and agrees to be bound by all of the terms and conditions of said agreement between said United States Gypsum Company and the Grantor.

4. The Grantee concurrently with the execution hereof surrenders all the issued and outstanding capital stock of the Grantor for complete cancellation.

In witness whereof the parties hereto have caused this instrument to be executed in duplicate in their respective names by their duly authorized officers and stock-
9530 holders of said corporation, signed, sealed with the corporate seal and delivered said instrument as the free and voluntary act of said corporation and as their own free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 12th day of April 1939.

EMIL E. LANG,
Notary Public.

My commission expires 1/18/41.

STATE OF OHIO,
County of Ottawa, ss:

I, Emil E. Lang, a notary public in and for said county in the state aforesaid, do hereby certify that O. S. Mansell and M. D. Musgrove personally known to me, and known to me to be the same persons whose names are subscribed to the foregoing instrument as vice-president and assistant secretary, respectively, of THE CELOTEX CORPORATION, a Delaware corporation, appeared before me this day in person and severally acknowledged that they, being thereunto duly authorized by the board of directors of said corporation, signed, sealed with the corporate seal and delivered said instrument as the free and voluntary act of said corporation and as their own free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 12th day of April 1939.

EMIL E. LANG,
Notary Public.

My Commission expires 1/18/41.

9531 Given under my hand and notarial seal this 12th day of April, 1939.

EMIL E. LANG,
Notary Public.

My commission expires 1/18/41.

STATE OF OHIO
County of Ottawa, ss:

I, Emil E. Lang, a notary public in and for said county in the state aforesaid, do hereby certify that O. S. Mansell and M. D. Musgrove personally known to me, and known to me to be the same persons whose names are subscribed to the foregoing instrument as vice-president and assistant secretary, respectively, of THE CELOTEX CORPORATION, a Delaware corporation, appeared before me this

day in person and severally acknowledged that they, being thereunto duly authorized by the board of directors of said corporation, signed, sealed with the corporate seal and delivered said instrument as the free and voluntary act of said corporation and as their own free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 12th day of April, 1939.

EMIL E. LANG,
Notary Public.

My Commission expires 1/18/41.

9532 Memorandum of Agreement by and between The Celotex Corporation, a Delaware corporation (hereinafter called "Celotex"), and The American Gypsum Company, an Ohio corporation (hereinafter called "American"), witnesseth:

Whereas Celotex has acquired and now owns all of the capital stock of American and proposes to acquire all of the assets and business of American; and

Whereas among the assets of American is the license granted to it by United States Gypsum Company, an Illinois corporation, under a license agreement between said United States Gypsum Company and American, dated November 25, 1929; and

Whereas said license agreement provides that the license therein granted may be assigned by American to any company acquiring all the assets and business or all the capital stock of American, on condition that American shall first obtain an agreement in writing from any such assignee agreeing to assume all of the obligations of American under said license agreement and to be bound by all of the terms and conditions thereof and shall deliver such agreement to the United States Gypsum Company, Licensor;

Now, therefore, IT IS MUTUALLY AGREED that in connection with the acquisition by Celotex of all the assets and business of American, American will assign to Celotex all American's right, title and interest in and to the license granted to American in and by the license agreement between United States Gypsum Company, an Illinois corporation, and American, dated November 25, 1929, and Celotex agrees to assume and does hereby as-

sume all of the obligations of American as Licensee under said license agreement and hereby assumes the claim which said United States Gypsum Company has against American for damages for infringement of said United States Gypsum Company's patents and the agreements in settlement and discharge thereof as in said license agreement contained, and agrees to be bound by all of the terms and conditions of said license agreement.

9533 In witness whereof the parties hereto have caused this instrument to be executed in duplicate in their respective names and by their duly authorized officers and their corporate seals to be hereunto affixed this 12th day of April, 1939.

THE CELOTEX CORPORATION,
by ——— ———,
Vice President.

ATTEST:

M. D. MUSGROVE,
Assistant Secretary.

THE AMERICAN GYPSUM COMPANY,
by C. F. MILLER,
President.

ATTEST:

O. S. MANSELL,
Secretary.

STATE OF OHIO,
County of Ottawa, ss:

I, E. E. Lang, a notary public in and for said county in the state aforesaid, do hereby certify that C. F. Miller and O. S. Mansell, personally known to me, and known to me to be the same persons whose names are subscribed to the foregoing instrument as vice president and secretary, respectively, of The American Gypsum Company, an Ohio corporation, appeared before me this day in person and severally acknowledged that they, being thereunto duly authorized by the board of directors and their cor-
9534 porate seals to be hereunto affixed, all on the day and year first above written.

THE AMERICAN GYPSUM COMPANY
by C. F. MILLER,
President.

Attest: _____,

Secretary.

THE CELOTEX CORPORATION,
by O. S. MANSELL,
Vice President.

Attest:

M. D. MUSGROVE,
Assistant Secretary.

STATE OF OHIO,
County of Ottawa, ss:

I, E. E. Lang, a notary public in and for said county in the state aforesaid, do hereby certify that C. F. Miller and O. S. Mansell, personally known to me, and known to me to be the same persons whose names are subscribed to the foregoing instrument as vice president and secretary, respectively, of The American Gypsum Company, an Ohio corporation, appeared before me this day in person and severally acknowledged that they, being thereunto duly authorized by the board of directors and stockholders of said corporation, signed, sealed with the corporate seal and delivered said instrument as the free and voluntary act of said corporation and as their own free and voluntary act, for the uses and purposes therein set forth.

9535 *Government's Exhibit No. 15*

LICENSE AGREEMENT

This Agreement made this 23rd day of April, A. D. 1930, by and between the United States Gypsum Company, an Illinois corporation of Chicago, Illinois, hereinafter referred to as Licensor, and the Kelley Plasterboard Company, Inc., a New Jersey corporation of Delawanna, New Jersey, hereinafter referred to as Licensee, Witnesseth, That

Whereas, Licensor is the owner of certain letters patent and applications for letters patent of the United States covering an improved gypsum wallboard and method or process of making the same, together with machines and appliances for the manufacture of such inventions which, with certain other patents, are more specifically set forth in Exhibit A attached hereto and made a part hereof; and

Whereas, Licensor was the owner of all of the right, title and interest in and under letters patent of the United States number 1,029,328 and number 1,034,746 known as the Utzman Patents, the last of which expired August 6, 1929, which said Utzman Patents were adjudicated by the United States District Court for the Northern District of Illinois, Eastern Division, and by the United States Circuit Court of Appeals for the Seventh Circuit, and were decreed by said courts as valid and having been infringed by the defendants named in said suits; and

Whereas, Birdsey Patent number 1,358,508, mentioned in said Exhibit A, was decreed by the United States District Court for the Northern District of Ohio as valid and
9536 infringed by the defendant in said cause by reason of its having made, used and sold plasterboard and/or gypsum wallboard with edges of the character disclosed in said patent, and said District Court ordered a perpetual injunction and accounting against defendant, which cause is now pending on appeal before the United States Circuit Court of Appeals for the Sixth Circuit; and

Whereas, Licensor is the owner of a new process disclosed in that certain application for United States letters patent filed by Carlisle K. Roos, entitled "Cementitious Material," now pending in the United States Patent Office and covering the process of making a cellular product, which comprises forming a tenacious foam and mixing the foam with a cementitious material, and of certain other applications filed by said Roos covering specific employment of said invention, and Licensor has heretofore aquired the sole and exclusive rights in the United States of America (when gypsum is used as the main binding material) in that certain application for United States letters patent described in Exhibit A filed by Erik Christian Bayer, entitled "Methods of Manufacturing Porous Building Materials," and relating to a process broadly similar to that of said first mentioned Roos application, which said Roos and Bayer applications are described and set forth in said Exhibit A; and

Whereas, Licensee desires to manufacture gypsum wallboard or gypsum plasterboard by the use of the machines or according to the processes or embodying the claims of said patents and applications for letters patent set forth in said Exhibit A, including the inventions and improve-

ments set forth and claimed in said Roos and Bayer applications and said Haggerty and Hite patents men-
9537 tioned therein, and to obtain a license from Licensor to make, use and sell the inventions and improvements set forth and claimed in all of said patents and applications for letters patent set forth in said Exhibit A throughout the full term thereof; and

Whereas, Licensor has agreed to grant a license to said Licensee and to make certain disclosures as to the said Roos and Bayer applications referred to in said Exhibit A upon the terms and conditions hereinafter stated;

Now, Therefore, in consideration of the sum of One Dollar and other good and valuable considerations, the receipt whereof is hereby acknowledged from each party to the other party, and in consideration of the mutual covenants and agreements hereinafter contained, the parties hereto do hereby agree as follows, to-wit:

1. Licensor agrees promptly to disclose to Licensee all information and formulae which it now has or may obtain relating to the process of making a cellular product through the formation of a tenacious foam and mixing the foam with a cementitious material, as set forth and claimed in said applications for letters patent filed by Carlisle K. Roos and Erik Christian Bayer, in so far as the same is or may be applied to gypsum, and including all information and formulae for the manufacture of gypsum plasterboard and gypusm wallboard embodying the inventions and improvements set forth and claimed in said Roos and Bayer applications, together with a description of the machines or appliances which it now has for making the same. It will assist Licensee to make its plant ready for practicing said process in the manufacture of plasterboard and gypsum wallboard by furnishing without cost to
9538 Licensee the advice and instruction of Licensor's experts and information with respect to the purchase and cost of said machines and appliances.

2. Licensor has agreed to and does hereby give and grant unto Licensee an indivisible and non-exclusive right, license and privilege of using the process or processes and making and using the machines and/or inventions set forth and claimed in any and all of said patents and/or applications for letters patent set forth in Exhibit A attached hereto in the manufacture of gypsum plasterboard

and/or gypsum wallboard at the plants or factories now owned and/or operated by Licensee, or at any other plant or factory hereafter owned and/or operated or controlled by it or any subsidiary, associated, or affiliated company, and of manufacturing at any such place or places, selling and using the United States of America and the territories and possessions thereof gypsum plasterboard or gypsum wallboard manufactured at any such place or places and embodying the inventions and improvements set forth and claimed in said patents and/or applications for letters patent described in said Exhibit A, for the full term of said letters patent or of any letters patent which may be granted for or upon any of said applications, including any extensions and/or reissues thereof.

It Is Expressly Understood and Agreed that the indivisible and non-exclusive right, license and privilege aforesaid is granted upon condition that the Licensor shall have and it hereby reserves the right to determine and fix at any time and to change from time to time during the existence of said patents and so long as said license shall continue, the minimum price or prices at which Licensee shall sell any plasterboard or gypsum wallboard manufactured by Licensee by use of any of the machines
9539 or appliances covered by any of said letters patent and which shall embody the inventions and improvements set forth and claimed in any of said patents which are presently issued, or any of said plasterboard or gypsum wallboard manufactured by second parties and which shall embody the inventions and improvements set forth and claimed in either patent number 1,500,452 or patent number 1,230,297; or commencing with the date when a patent shall have been granted or issued for or upon any of the said Roos or Bayer inventions and/or applications any of said plasterboard or gypsum wallboard manufactured by Licensee, the body or core of which is made according to the process set forth and claimed in any patent granted r or upon any of said Roos or Bayer inventions and/or applications, and in case Licensor shall exercise the right so reserved, it shall first serve written notice of its intention so to do upon Licensee, accompanied with a statement of the minimum price or prices at which Licensee shall sell said gypsum plasterboard or gypsum wallboard, and thereafter shall give to Licensee written or telegraphic notice of any change in such price or prices, and Licensee expressly covenants and agrees that it will not, so long as

this agreement shall continue in force and effect and after receipt of such notice given in accordance with the terms and conditions hereof, directly or indirectly, sell or offer for sale any gypsum plasterboard or gypsum wallboard manufactured by it by use of any of the machines or appliances covered by any of said patents and which during the existence thereof shall embody the inventions and improvements set forth and claimed in any of said patents which are presently issued, or any gypsum plasterboard or gypsum wallboard manufactured by said Licensee and which during the existence thereof shall embody the inventions and improvements set forth and claimed in
9540 either patent number 1,500,452 or patent number 1,230,297, or any gypsum plasterboard or gypsum wallboard manufactured by Licensee after a patent shall have issued upon any of the said Roos or Bayer inventions and/or applications and during the existence thereof, the body or core of which is made according to the process set forth and claimed in any patent granted for or upon any of said inventions and/or applications, at a price or prices less than that stated by Licensor in said notice or in any such written or telegraphic notice of a change in such price or prices.

Said minimum price shall not be more than that price at which Licensor determines to sell plasterboard or gypsum wallboard embodying the inventions and improvements set forth and claimed in said patents to its own like trade in the same market.

3. Licensee agrees to pay to Licensor for said disclosures, information and assistance and the agreements of Licensor herein contained, and for the right, license and privilege of using the processes and making and using the machines and/or inventions in the manufacture of plasterboard and gypsum wallboard covered by said patents and applications for letters patent described in said Exhibit A, and for the privilege of manufacturing, using and/or selling plasterboard and gypsum wallboard embodying the inventions and improvements set forth and claimed in said patents and applications for letters patent, an amount (hereinafter for convenience referred to as a license fee or royalty) equivalent to three and one-half per cent (3½%) of the selling price of Licensee of all plasterboard and gypsum wallboard of every kind, whether or not made by the use of said machines and/or

embodying the inventions and improvements set
9541 forth and claimed in said letters patent or applications for letters patent, manufactured and sold by Licensee between the date hereof and February 10, 1937, the date of the expiration of patent number 1,330,413 mentioned in said Exhibit A, and thereafter an amount equivalent to two per cent (2%) of the selling price of Licensee of all such plasterboard and gypsum wallboard manufactured and sold by it between February 10, 1937, and July 8, 1941, the date of the expiration of said patent number 1,500,453, and thereafter an amount equivalent to one per cent (1%) of the selling price of Licensee of all such plasterboard and gypsum wallboard manufactured and sold by it between July 8, 1941, and the date of the expiration of the last to expire of any patent granted or issued for or upon any of the said Roos or Bayer applications; Provided, However, that if no patent shall have been granted or issued for or upon any of said Roos or Bayer applications covering said process referred to in paragraph 1 hereof, within two (2) years from the date hereof, then commencing with the end of said two (2) year period the said license fees or royalties agreed to be paid by Licensee shall be reduced by one per cent (1%) of Licensee's said selling price until such patent shall have been granted or issued for or upon any of said Roos and Bayer applications, at which time Licensee shall again commence to pay the full amount of said license fees or royalties until the date of the expiration of the last to expire of any such patent or patents. The amount of one per cent (1%) of said selling price included in said royalties or license fees is the amount agreed to be paid by Licensee for the use of said Haggerty and Hite patents.

Licensee's selling price shall mean the delivered selling price of Licensee, less freight paid by the customer and less regular cash discounts allowed by Licensee.

9542 4. It is further agreed that so long as the license provided for in paragraph 2 hereof shall remain in force between the parties hereto, or in case the license granted under paragraph 2 hereof shall expire before the expiration of the patents specifically described in this paragraph, and the said license granted under paragraph 2 shall continue in force between the parties hereto for the full term of the last to expire of any of said patents described in said Exhibit A, or of any patent or patents granted for or upon any application described in said

Exhibit A, then until the expiration of the patents specifically described in this paragraph, Licensor does hereby give and grant unto the Licensee an indivisible and non-exclusive right, license and privilege of making and using the inventions set forth and claimed in those certain patents known as the Birdsey Plasterboard Bundle Patent number 1,696,877, dated December 25, 1928, Utzman Patent number 1,724,740 dated August 13, 1929, Birdsey Patent number 1,730,113 dated October 1, 1929, and applications for letters patent serial numbers 329,581 filed December 31, 1928, and 296,354 filed July 30, 1928, and any patent which may be granted for or upon said applications, including any extensions and/or reissues thereof, at the plants or factories now owned or operated by Licensee or at any other plant or factory hereafter owned and/or operated and controlled by Licensee or any subsidiary, associated or affiliated company of Licensee, and of selling or using bundles of plasterboard and/or gypsum wallboard put up or bundled by Licensee at any such place or places according to the claims set forth and claimed in the said patents and applications for letters patent in this paragraph described, upon the terms and conditions hereinafter stated.

Licensee agrees to pay to Licensor for the right, 9543 license and privilege of making, using or selling the inventions set forth and claimed in said patents and applications in the next preceding paragraph described, in addition to the sums hereinabove set forth an amount (hereinafter referred to as a license fee or royalty) equivalent to ten cents (10¢) per one thousand (1,000) square feet of plasterboard and/or gypsum wallboard which is sold by Licensee in bundles of any kind, whether or not the bundles shall be made according to the claims set forth and claimed in said patents, which said license fee or royalty shall be payable at the times and in accordance with the terms of paragraph 6 hereof. The term "bundle" shall not include unbundled material wired or strapped for purpose of transportation or unbundled material shipped for export or coastwise trade in fiber, wooden or other crates.

5. It Is Expressly Understood and Agreed that the license herein granted shall be personal to the Licensee, and that the same or any right herein or thereunder shall not be sold or assigned or transferred without the written consent of Licensor, or transferred by operation of law:

Provided, However, that the same may be assigned by Licensee to any company acquiring all the assets and business or all of the capital stock of Licensee, on condition that Licensee shall first obtain an agreement in writing from any such assignee agreeing to assume all of the obligations of Licensee under this agreement and to be bound by all of the terms and conditions hereof and shall deliver such agreement to Licensor. Licensee agrees not to sell all of its assets and business or all of its capital stock or to transfer and convey its plasterboard and/or wallboard business, or its assets used in connection therewith, without requiring the purchaser or purchasers thereof to assume, in writing, all of the obligations of
9544 Licensee hereunder, and to agree to be bound by all of the terms and conditions of this contract, and deliver such agreement to Licensor.

6. Licensee agrees to keep separate full and accurate books of account and records showing the exact quantity of all plasterboard and gypsum wallboard manufactured and sold by it, as well as a separate record of all plasterboard and/or gypsum wallboard sold by it in bundles, and agrees that on or before the twentieth day of each calendar month it will render unto Licensor true written returns verified under oath by an officer or other agent of Licensee, setting forth the quantity of all plasterboard and/or gypsum wallboard manufactured and sold by it during the preceding calendar month and the quantity thereof put up and sold by it in bundles, together with the price or prices at which the same was sold and is to be accounted for hereunder, such written returns to be delivered to Licensor at its office in Chicago, Illinois, and Licensee agrees to pay to Licensor on or before the 20th day of each calendar month at the office of Licensor at Chicago, Illinois, the hereinbefore stipulated royalties or license fees which may then be due under this agreement on account of all said plasterboard and/or gypsum wallboard manufactured and sold by it and put up and sold by it in bundles during the next preceding calendar month.

7. Licensor, or its duly authorized representative, shall have the right at all reasonable times during business hours to inspect the books of account and records of Licensee referred to in the next preceding paragraph hereof, including all records of every kind showing the quantity of said plasterboard and gypsum wallboard

manufactured and sold by it and the quantity thereof put up and sold by it in bundles and the price or prices at which the same was sold, and to make copies thereof and memoranda therefrom; Provided, However, that
9545 if at the time of any such examination Licensee shall request it in writing, then such examination shall be made by a certified public accountant agreed upon between the parties hereto, in which event the expense thereof shall be borne equally by both parties. If the parties at any such time shall not agree upon the certified public accountant to make such examination, then Licensor shall name three certified public accountants of good standing not directly or indirectly employed by it or in any other way connected with it, and if Licensee shall not accept any one of them, then Licensor shall have the right to make such examination itself.

8. Licensee agrees that all plasterboard or gypsum wallboard manufactured and sold by it embodying the claims of any of said patents and/or applications for letters patent shall be distinctly marked with the word "Patented" and/or "Patent Applied for," as the case may be, together with the numbers of any of said patents or applications specified by Licensor, the claims of which may be embodied in said plasterboard or gypsum wallboard, and in connection with said marking Licensee will further mark said board with the words "Licensed Under the Above Letters Patent" and/or "Licensed Under Pending Applications for Letters Patent," as the case may be, which marking shall be plainly visible. Licensee further agrees that all bundles put up and sold by it embodying the claims of any of said patents numbers 1,696,877; 1,724,470 and 1,730,113 and/or any of said applications serial numbers 329,581 and 296,354 shall be similarly marked together with the numbers of said bundle patents and/or applications.

9. Having regard for the fact that there are or may be certain manufacturers of plaster or gypsum products, jobbers or other wholesale distributors of such products, who do not or may not manufacture gypsum wall-
9546 board or plasterboard but who desire or may desire to have gypsum wallboard or plasterboard manufactured for them, It Is Understood and Agreed that Licensee may, with the written consent of Licensor, manufacture for jobbers (being those who do not manufacture but buy and sell plasterboard or gypsum wallboard in

straight cars or in mixed cars with other building material and who do not sell at retail) gypsum wallboard or plasterboard embodying the inventions and improvements set forth and claimed in said letters patent or in any letters patent after the same shall have been issued, granted for or upon any of the said applications and may, with the written consent of Licensor, manufacture for any such other manufacturer or other wholesale distributor, gypsum wallboard or plasterboard embodying the said inventions and improvements; Provided, However, that the said license fee or royalty to be paid to Licensor as hereinbefore provided shall be based upon all gypsum wallboard and plasterboard manufactured for and sold and invoiced to such other manufacturer, jobber or wholesale distributor and upon the regular selling price of Licensee of such plasterboard or gypsum wallboard to its regular dealer trade at the time of such sale and invoice; and shall not be based upon the price at which plasterboard or gypsum wallboard is sold and invoiced by Licensee to such other manufacturer, jobber or wholesale distributor. Nothing hereinbefore contained in this agreement shall be construed to give Licensee the right to manufacture gypsum plasterboard or gypsum wallboard embodying the inventions and improvements set forth and claimed in any of said letters patent or in any letters patent after the same shall have been granted for or upon any of said applications for any such jobber, manufacturer or wholesale distributor, or to sell the same, without the written consent of Licensor.

10. Licensee covenants and agrees that all of said gypsum plasterboard and gypsum wallboard manu-
9547 factured and sold by it embodying the inventions and improvements set forth and claimed in any of said letters patent or patents issued upon any of said applications and commonly known in the trade as "Seconds" shall be plainly invoiced as "Seconds" and shall be plainly marked with a visible red stamp or label firmly fixed on each of said boards showing the word "Seconds" in letters at least three inches in height.

11. As one of the considerations for the indivisible and non-exclusive license herein and hereby granted, Licensee hereby acknowledges the validity of said letters patent or of any letters patent which may be granted or issued for or upon said applications, forming the subject-

matter of said license so long as said license shall remain in full force and effect, and agrees that it will not at any time during the existence of said license, directly or indirectly, by itself, through or together with another or others, contest the validity of either or any of said letters patent or the title thereto of Licensor.

12. In the event that either party shall at any time neglect, fail or refuse to keep or perform any of the conditions or agreements herein to be kept by it and performed, then the other party, at its election, may serve upon the party in default written notice of intention to terminate this license, which notice shall specify the alleged neglect, failure or refusal, and if within thirty (30) days from the date of delivery of said notice the party in default shall not cure the default specified in said notice, then the other party may cancel and terminate this agreement by notifying the party in default in writing of its election so to do, without the necessity of any court action; Provided, However, that neither party shall be relieved thereby from any liability accrued at the time of such termination; and Provided, Further, that
9548 if the party upon whom said notice is served shall deny that it is in default in whole or in part, as specified therein, then the party serving such notice shall not be privileged to cancel this contract on account of the alleged default specified therein, provided the party upon whom said notice shall have been served shall within said thirty (30) day period perform the agreements and submit the question to arbitration, as in this paragraph hereinafter set forth. In case of any such denial the party upon whom the notice shall have been served shall within said thirty (30) day period state in writing to the other party wherein and in what respect it denies the default specified in said notice and shall at the same time make good any default specified therein which it does not deny and appoint in writing one person as arbiter to arbitrate the question of whether or not it is in default in respect to that which it shall have denied as aforesaid, it being understood, however, that if the question shall be with respect to the amount of royalties or license fees to be paid hereunder, then the Licensee shall first pay or offer to pay the amount of such license fees or royalties which it then admits is due and payable in accordance with the terms hereof, and the acceptance thereof by the Li-

censor shall not operate as a waiver of any of its rights hereunder or of any claim it may have made in any notice served by it upon Licensee. The party so serving said notice shall, after the other party shall have made good any default specified in said notice which it did not deny in writing as aforesaid, including the payment of royalties or license fees, if any, admitted by it to be due and payable hereunder, and within ten (10) days from the date of the appointment of said first arbiter in accordance with the terms hereof, appoint in writing another person as arbiter, and the two persons so
9549 appointed shall within ten (10) days or as soon as possible thereafter appoint in writing a third person as arbiter. The three persons so appointed shall, within thirty (30) days from the date of the appointment of said last mentioned arbiter, or as soon as possible thereafter, decide whether or not the party upon whom said notice has been served is in default hereunder with respect to anything contained in said notice. The decision of a majority of the three arbiters so appointed shall constitute a final settlement of the said question and be binding and conclusive upon both the Licensor and the Licensee, and if it shall have been determined by a majority of the said arbiters that the party upon whom said notice was served is in default with respect to anything contained in said notice and the party so found to have been in default shall fail or refuse to comply with the terms of the award or finding made by said arbiters within thirty (30) days from the date such award or finding shall have been made, the party serving said notice may at its election terminate and cancel this agreement in writing. In the event of default hereunder by either party and notice of such default is served by the other party as herein provided, and after service of such notice the party in default shall cure the same as hereinbefore provided the same shall constitute a nullification of said notice to the same effect as if said notice had not been served. In case at any time the Licensee shall be adjudged a bankrupt, then the license hereunder shall immediately be and become cancelled and terminated, but the Licensor shall not thereby be prevented from collecting all license fees or royalties accrued hereunder at the time of such termination. The waiver of any breach by either party shall not be interpreted as constituting a waiver of any further breach or
9550 breaches. Either party may proceed by action to specifically enforce this contract or any of the terms,

conditions and covenants thereof by injunction or in such other manner as may be provided by law.

13. Any notice to be given under the terms hereof may be served by the Licensor or the Licensee by mailing the same to the other party hereto, postage prepaid and registered, addressed to any of its officers at its last known principal office, and the deposit of any such notice in the United States mails, postage prepaid and so addressed, shall constitute service of notice hereunder. Any telegraphic notice given under paragraph 2 hereof shall be confirmed in writing in the ordinary course of business.

14. It is understood and agreed that if at any time during the term hereof the Licensee shall, in the judgment of the Licensor, suffer substantial detriment by reason of any infringement on the part of any person or persons of any of said letters patent or of any patent that may be granted upon said applications, under which this license is granted, the Licensor will afford the Licensee such reasonable protection as in the judgment of the Licensor shall be necessary or proper.

If a court of last resort upon final appeal or review shall decree all the claims of the patents granted for or upon said Roos and Bayer applications invalid or Licensee shall be permanently enjoined from manufacturing plasterboard and gypsum wallboard, the body or core of which is made according to the process set forth and claimed in said Roos and Bayer applications in such manner that they cannot practice in any way any of the inventions set forth in the said applications, and such injunction shall be made final by a court of last re-
9551 sort upon final appeal or review, then from the time the court of last resort upon final appeal or review shall decree that all the claims of the patents granted or issued for or upon said Roos and Bayer applications are invalid, or make such injunction permanent and final, the license fees or royalties to be paid by Licensee hereunder shall be reduced by one per cent (1%) of said selling price, or if a court of last resort upon final appeal or review shall decree that all the claims of said Haggerty and Hite patents are invalid or Licensee shall be permanently enjoined from manufacturing plasterboard and gypsum wallboard embodying the inventions and improvements set forth and claimed in said Haggerty and Hite patents in such manner that they cannot prac-

tice in any way any of the inventions set forth in said patents, and such injunction shall be made final by a court of last resort upon final appeal or review, then from the time the court of last resort upon final appeal or review shall decree all claims of said Haggerty and Hite patents invalid or make said injunction permanent and final, the said license fees or royalties agreed to be paid by Licensee for said Haggerty and Hite patents shall cease and determine.

15. In case Licensor shall, subsequent to the effective date hereof, grant to any other person except Abel Davis and Eugene Holland, receivers of the Universal Gypsum & Lime Co. or their successors or to the said Universal Gypsum & Lime Co., any license under said patents or applications for letters patent set forth in said Exhibit A and paragraph 4 hereof for the manufacture, sale or use of gypsum plasterboard or gypsum wallboard or bundles thereof, embodying the claims or inventions set forth and claimed in said patents or said applications, or shall grant any right under any such license,
9552 upon terms more favorable than those granted hereunder to this Licensee, then it will grant to this Licensee a license on the same terms or extend to it the same right granted to any such other person. This paragraph shall not apply to any license granted on or prior to the effective date hereof, nor shall the same apply to the terms of settlement of any claim of Licensor or provisions with respect to the payment thereof, contained in any such license.

16. The terms "gypsum plasterboard," "gypsum wallboard" and "plasterboard" shall be understood to mean all board made of gypsum, by whatever name called, having the characteristics of gypsum plasterboard or gypsum wallboard, irrespective of the purpose for which the same may be sold or used, and shall include gypsum laths and all other gypsum boards.

17. If at any time after the expiration of two (2) years from the date hereof, there shall have been invented or come into use any process which shall make the said process of forming a cellular product as set forth and claimed in said Roos and Bayer applications obsolete or shall displace the same, and the Licensor shall in its own manufacture permanently and wholly abandon the use of the subject-matter of the claims of said Roos and

Bayer applications, it shall notify Licensee in writing thereof, and Licensee may then, upon thirty (30) days' written notice to Licensor, cancel and terminate this license in so far as the same applies to said Roos and Bayer applications or to the patent or patents granted or issued therefor or thereupon, and from the date of such cancellation the royalties or license fees to be paid by Licensee hereunder shall be reduced by one per cent (1%) of its said selling price; Provided, However, that if Licensor shall not in such event permanently and wholly abandon the use of said process but shall only partially abandon the same, then to the extent or degree and for the term that Licensor shall abandon the same in its own manufacture Licensee shall be relieved from the payment of license fees or royalties to the same extent, that is to say, if Licensor shall in such event manufacture and sell any board the core of which is made of gypsum of a particular size, kind or make, or for a particular purpose or use, without the use of said process embodied therein, then if Licensee shall manufacture and sell the same board of the same particular size, kind or make and for the same purpose or use, without the use of said process embodied therein, then Licensee shall not be required to pay royalties or license fees upon such particular board for the term that Licensor shall manufacture and sell the same. "License fees" and "royalties" for the purpose of this paragraph shall mean one per cent (1%) of said selling price. The use by Licensor of any improvement which Licensee has the right to use as set forth in paragraph 18 hereof, or the manufacture of plasterboard or gypsum wallboard without the use of said process for sale only in foreign countries where Licensor has no patented rights in said process, shall not constitute an abandonment of said process or a partial abandonment thereof within the meaning of this paragraph.

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18. If Licensor shall at any time during the existence of this agreement make or obtain any improvement for the formation of the bubble described in the process set forth in said Roos and Bayer applications and/or method of its introduction in the core of plasterboard or gypsum wallboard, and which improvement is covered by the claims of said Roos and Bayer applications and shall itself use the same in its own manufacture, then so long as Licensee shall continue to pay the license fees or royalties hereinbefore stipulated the right, license or privilege herein contained

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shall be extended to and include the use of said improvement in the manufacture by Licensee of gypsum plasterboard or gypsum wallboard, subject to all of the terms and conditions herein contained, except only that Licensee shall not be required to pay any additional sum, royalty or license fee therefor. It is further understood that if a patent or patents shall be granted or issued for or upon said improvement, then all of the provisions of this agreement, as well as the provision of paragraph 2 hereof reserving the right in Licensor to determine and fix at any time and to change from time to time the minimum price or prices at which Licensee shall sell any gypsum plasterboard or gypsum wallboard manufactured by Licensee and embodying the claims of said patents, shall apply to the improvement set forth and claimed in any patent or patents granted or issued for or upon said improvement. Licensor will promptly notify Licensee of the general adoption by it of any such improvement in its own manufacture, together with such information as it may possess as to the use thereof in the manufacture of plasterboard and gypsum wallboard.

19. Licensee has investigated and fully satisfied itself with respect to the inventions and improvements set forth in said patents and applications for letters patent and the use thereof in its own manufacture, and has executed this agreement without relying upon any representations which may have been made by Licensor with respect thereto. No representations have been made by Licensor not expressly stated in this contract which Licensee 9555 shall at any time have any right to rely upon as an inducement for its making this contract or for any result or results to be obtained by Licensee in its own plant by its use of the inventions and improvements set forth and claimed in any of said patents or applications for letters patent.

20. The Licensor agrees at any time during the term hereof to extend to Licensee, upon its written request, an indivisible and non-exclusive license or privilege to use the said process or processes set forth and claimed in said Roos or Bayer applications in the manufacture in its said plants of any other gypsum product not specifically covered by this agreement and in which Licensor shall use the same in its own manufacture and to sell the same, upon the payment to Licensor of one per cent (1%) of the selling price of Licensee of all of said other gypsum

product, whether or not embodying the said process in making the same, manufactured and sold by Licensee and upon the same terms as set forth herein and subject to all of the conditions hereof, in which event in the agreement for the same there shall be substituted for the words "plasterboard and/or gypsum wallboard" the name of such other product or products. An agreement containing all of said terms and conditions shall be reduced to writing and signed by both parties before the same shall become effective.

21. This license and all of the covenants and agreements hereof shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto, but nothing in this paragraph shall be construed to permit an assignment hereof by Licensee except as hereinabove specifically provided.

In witness whereof, the parties hereto have caused these presents to be signed by their respective
9556 presidents, attested by their respective secretaries and their corporate seals to be hereunto affixed in duplicate the day and year first above written.

UNITED STATES GYPSUM COMPANY,
By S. L. AVERY,
Its President.

ATTEST:
R. G. BEAR,
Secretary.

[SEAL.]

KELLEY PLASTERBOARD COMPANY, INC.,
By S. J. KELLEY,
Its President.

ATTEST:
G. A. WILEMAN,
Secretary.

[SEAL.]

9557 EXHIBIT A.

Utzman patent No. 1,330,413. Application filed September 3, 1918, granted February 10, 1920, expires February 10, 1937.

Birdsey patent No. 1,358,508. Application filed January 2, 1920, granted November 9, 1920, expires November 9, 1937.

Utzman patent No. 1,383,249. Application filed August 13, 1918, granted June 28, 1921, expires June 28, 1938.

Birdsey patent No. 1,383,254. Application filed July 29, 1918, granted June 28, 1921, expires June 28, 1938.

Birdsey patent No. 1,383,255. Application filed January 2, 1920, granted June 28, 1921, expires June 28, 1938.

Birdsey patent No. 1,384,298. Application filed August 19, 1920, granted July 13, 1921, expires July 12, 1938.

Birdsey patent No. 1,395,031. Application filed January 2, 1920, granted October 25, 1931, expires October 25, 1938.

Birdsey patent No. 1,395,033. Application filed January 2, 1920, granted October 25, 1921, expires October 25, 1938.

Birdsey patent No. 1,406,967. Application filed January 3, 1921, granted February 21, 1922, expires February 21, 1939.

Birdsey patent No. 1,427,939. Application filed January 3, 1921, granted September 5, 1922, expires September 5, 1939.

Birdsey patent No. 1,428,624. Application filed January 2, 1920, granted September 12, 1922, expires September 12, 1939.

Brookby patent No. 1,489,693. Application filed September 25, 1922, granted April 8, 1924, expires April 8, 1941.

Birdsey patent No. 1,514,827. Application filed October 6, 1921, granted November 11, 1924, expires November 11, 1941.

Birdsey patent No. 1,515,380. Original application filed January 2, 1920, granted November 11, 1924, expires November 11, 1941.

9558 Birdsey patent No. 1,518,243. Application filed September 22, 1922, granted December 9, 1924, expires December 9, 1941.

Birdsey patent No. 1,525,715. Application filed January 2, 1920, granted February 10, 1925, expires February 10, 1942.

Birdsey patent No. 1,526,307. Application filed October 10, 1921, granted February 10, 1925, expires February 10, 1942.

Utzman patent No. 1,540,045. Application filed March 14, 1923, granted June 2, 1925, expires June 2, 1942.

Birdsey patent No. 1,558,459. Application filed October 4, 1922, granted October 27, 1925, expires October 27, 1942.

Birdsey patent No. 1,561,635. Application filed January 3, 1921, granted November 17, 1925, expires November 17, 1942.

Armstrong patent No. 1,278,821. Application filed January 4, 1918, granted September 17, 1918, expires September 17, 1935.

Armstrong patent No. 1,348,387. Application filed March 15, 1919, granted August 3, 1920, expires August 3, 1937; application for reissue filed June 3, 1922, Serial No. 565,737, reissued January 24, 1928, as Reissue patent No. 16,860.

Armstrong patent No. 1,367,292. Application filed July 12, 1919, granted February 1, 1921, expires February 1, 1938; application for reissue filed June 9, 1922, Serial No. 567,205, reissued May 22, 1928 as Reissue Patent No. 16,969.

Utzman patent No. 1,455,127. Application filed June 14, 1922, granted May 15, 1923, expires May 15, 1940.

Utzman patent No. 1,492,588. Application filed June 14, 1922, granted May 6, 1924, expires May 6, 1941.

Williams patent No. 1,519,180. Application filed August 18, 1922, granted December 16, 1924, expires December 16, 1941.

Armstrong patent No. 1,556,575. Application filed October 1, 1921, granted October 13, 1925, expires October 13, 1942.

Armstrong patent No. 1,399,455. Application filed February 24, 1920, granted December 6, 1921, expires December 6, 1938.

9559 Tyler patent No. 1,417,117. Application filed November 15, 1919, granted May 23, 1922, expires May 23, 1939.

Birdsey patent No. 1,643,801. Application Serial No. 437,062, filed January 13, 1921, granted September 27, 1927, expires September 27, 1944.

Birdsey patent No. 1,650,930. Application Serial No. 506,376, filed October 10, 1921, granted November 29, 1927, expires November 29, 1944.

Birdsey patent No. 1,676,318. Application Serial No. 545,231, filed March 20, 1922, granted July 10, 1928, expires July 10, 1945.

Birdsey patent No. 1,710,915. Application Serial No. 555,627, filed April 19, 1922, granted April 30, 1929, expires April 30, 1946.

Smith patent No. 1,603,158. Application Serial No. 662,359, filed September 12, 1923, granted October 12, 1926, expires October 12, 1943.

Birdsey patent No. 1,666,161. Application Serial No. 737,237, filed September 12, 1924, granted April 17, 1928, expires April 17, 1945.

Utzman patent No. 1,631,108. Application Serial No. 750,224, filed November 17, 1924, granted May 31, 1927, expires May 31, 1944.

Brookby & Absmeier patent No. 1,689,322. Application Serial No. 91,297, filed March 1, 1926, granted October 30, 1928, expires October 30, 1945.

Armstrong patent No. 1,701,291. Application Serial No. 310,470, filed July 12, 1919, granted February 5, 1929, expires February 5, 1946.

Utzman patent No. 1,638,280. Application Serial No. 374,833, filed April 19, 1920, granted August 9, 1927, expires August 9, 1944.

Armstrong patent No. 1,641,611. Application Serial No. 377,421, filed April 29, 1920, granted September 6, 1927, expires September 6, 1944.

Speer patent No. 1,686,671. Application Serial No. 427,044, filed November 29, 1920, granted October 9, 1928, expires October 9, 1945.

Speer patent No. 1,641,648. Application Serial No. 427,045, filed November 29, 1920, granted September 6, 1927, expires September 6, 1944.

Melilhope patent No. 1,604,707. Application Serial No. 473,288, filed May 28, 1921, granted October 26, 1926, expires October 26, 1943.

9560 Gustafson patent No. 1,665,168. Application Serial No. 509,366, filed December 2, 1919, renewed October 21, 1921, granted April 3, 1928, expires April 3, 1945.

Kohler et al patent No. 1,673,944. Application Serial No. 540,412, filed March 2, 1922, granted June 19, 1928, expires June 19, 1945.

Utzman patent No. 1,703,183. Application Serial No. 581,362, filed August 12, 1922, granted February 26, 1929, expires February 26, 1946.

Birdsey patent No. 1,718,890. Application Serial No. 583,795, filed August 23, 1922, granted June 25, 1929, expires June 25, 1946.

Utzman application Serial No. 477,371, filed June 14, 1921, finally allowed April 26, 1929. Patent No. 1,731,116, will issue October 8, 1929.

Knode application Serial No. 590,358. Filed September 25, 1922.

Utzman application Serial No. 581,361. Filed August 12, 1922.

Williams application Serial No. 582,606. Filed August 18, 1922.

Roos application Serial No. 733,197, filed August 20, 1924.

Bayer application Serial No. 661,723, filed September 8, 1923.

Roos application Serial No. 3477, filed January 19, 1925.

Roos application Serial No. 142,155, filed October 16, 1926.

Haggerty patent No. 1,500,452. Application Serial No. 565,433, filed June 2, 1922, granted July 8, 1924.

Hite patent No. 1,230,297. Application Serial No. 115,649, filed August 18, 1916, granted June 19, 1917.

9561 *Government's Exhibit No. 16*

This Agreement, made and entered into this 3rd day of January A.D. 1939, by and between the United States Gypsum Company, an Illinois corporation, of Chicago, Illinois (hereinafter sometimes referred to as "Gypsum"), and Newark Plaster Company, a New Jersey corporation, of Newark, New Jersey, resulting from the merger of Newark Plaster Company, a New Jersey corporation, of Newark, New Jersey, and Kelley Plasterboard Company, Inc., a New Jersey corporation (hereinafter sometimes referred to as "Newark"), witnesseth, that

Whereas, Gypsum and said Kelley Plasterboard Company, Inc., entered into a certain license agreement dated April 23, 1930 (as supplemented by letters from Gypsum to Kelley dated June 18, 1930, and August 31, 1938), under the terms of which Gypsum, as licensor therein named, granted to said Kelley Plasterboard Company, Inc., as licensee therein named, certain indivisible and non-exclusive rights, licenses and privileges under certain letters patent and applications for letters patent relating to the manufacture and sale of gypsum plasterboard and gypsum wallboard, as therein more specifically described and set forth; and

Whereas, said Newark Plaster Company existing before said merger and said Kelley Plasterboard Company, Inc., have effected a merger in accordance with the provisions of the New Jersey General Corporation law, under
9562 the corporate name of Newark Plaster Company, and said Kelley Plasterboard Company, Inc., has assigned, transferred and set over unto Newark, all of its right, title and interest in and to said license agreement and the rights, licenses and privileges therein contained, upon and subject to all of the conditions, terms and agreements as in said license agreement set forth; and

Whereas, it is provided in said license agreement that the licenses therein granted shall be personal to licensee and that the same, or any right therein or thereunder, shall not be sold or assigned or transferred without the written consent of licensor, or transferred by operation of law, provided that the same may be assigned by licensee to any company acquiring all of the assets and business or all of the capital stock of licensee, on condition that licensee shall first obtain an agreement in writing from any such assignee, agreeing to assume all of the obligations of

licensee under said agreement and to be bound by all of the terms and conditions thereof, and shall deliver such agreement to licensor;

Now, therefore, in consideration of the sum of One Dollar ($1.00), and other good and valuable considerations, each to the other in hand paid, receipt whereof is hereby acknowledged by each of the parties hereto, and in consideration of the mutual covenants and agreements hereinafter contained, the parties hereto have agreed as follows:

9563 1. Gypsum consents to the assignment to Newark of the said license agreement, together with all of the rights, licenses and privileges therein contained, subject to all of the conditions, terms and agreements as in said license agreement set forth.

2. Newark agrees to, and does hereby, assume all of the obligations of licensee under said license agreement, and agrees to be bound by all of the terms and conditions thereof to the same effect as if Newark originally had been named in said license agreement as licensee therein.

3. In case Newark shall at any time sell any gypsum plasterboard or gypsum wallboard, or cause the same to be sold, through or by any of its wholly owned subsidiaries, then Sections 6 and 7 of said license agreement shall be read as if the words "or sold by its wholly owned subsidiary" were inserted after the words "sold by it", wherever such last mentioned words appear in said Sections 6 and 7 of said license agreement, and as if the words "or its wholly owned subsidiary" were inserted after the words "of licensee" in the third line of said Section 7 of said license agreement. The sales or acts of any such subsidiary shall for all purposes of said license agreement be construed as the sales or acts of Newark as such licensee, and Newark shall be fully responsible therefor. Nothing herein contained shall be construed to grant any license under said patents to any wholly owned subsidiary of
9564 Newark, or to authorize the sale of gypsum plasterboard or gypsum wallboard embodying the inventions and improvements set forth and claimed in any of said patents to or by any such subsidiary, without the written consent of Gypsum thereto first had and obtained.

In witness whereof, the parties hereto have caused these presents to be signed by their respective Presidents, at-

tested by their respective Secretaries, and their corporate seals to be hereunto affixed, in duplicate, the day and year first above written.

UNITED STATES GYPSUM COMPANY,
By W. L. KEADY,
Vice-President.

Attest:

C. H. SHAVER,
Secretary.

NEWARK PLASTER COMPANY,
By FREDERICK TOMKINS,
Its President.

Attest:

F. H. MILES,
Asst. Secretary.

9565 This Indenture, made this 16th day of December A. D. 1938, between the Kelley Plasterboard Company, Inc., a New Jersey corporation, of Delawanna, New Jersey, Party of the First Part, and Newark Plaster Company, a New Jersey corporation, of Newark, New Jersey, Party of the Second Part, witnesseth, that

Whereas, by license agreement dated April 23, 1930 (as supplemented by letters from the United States Gypsum Company to First Party, dated June 18, 1930, and August 31, 1938), and made between the United States Gypsum Company, an Illinois corporation, of Chicago, Illinois, the licensor, of the one part, and Kelley Plasterboard Company, Inc., the licensee, of the other part, said licensor granted unto said licensee certain indivisible and non-exclusive rights, licenses and privileges under certain letters patent and applications for letters patent relating to the manufacture and sale of gypsum plasterboard and gypsum wallboard, as more specifically described and set forth in said license agreement; and

Whereas, Newark Plaster Company, a New Jersey corporation, of Newark, New Jersey, and said Kelley Plasterboard Company, Inc., are about to effect a merger under and pursuant to the provisions of the New Jersey General Corporation Law, under the corporate name of Newark Plaster Company; and

Whereas, it is provided in said license agreement
9566 that the license therein granted shall be personal to licensee and that the same, or any right therein or

thereunder, shall not be sold or assigned or transferred without the written consent of licensor, or transferred by operation of law, provided that the same may be assigned by licensee to any company acquiring all the assets and business or all the capital stock of licensee, on condition that licensee shall first obtain an agreement in writing from any such assignee, agreeing to assume all of the obligations of licensee thereunder and to be bound by all of the terms and conditions thereof, and shall deliver such agreement to licensor,

Now, this indenture witnesseth, that in consideration of the sum of One Dollar ($1.00), and other good and valuable considerations, receipt whereof is hereby acknowledged, First Party does hereby assign, transfer and set over unto the said Newark Plaster Company resulting from the merger of Newark Plaster Company, a New Jersey corporation, of Newark, New Jersey, and Kelley Plasterboard Company, Inc., a New Jersey corporation, of Delawanna, New Jersey, effective however as of the date on which said merger shall become effective, all of the right, title and interest of First Party in and to said license agreement and the rights, licenses and privileges therein contained, upon and subject to all of the conditions, terms, and agreements as in said license agreement set forth.

9567 The parties agree that the Newark Plaster Company resulting from said merger shall assume all of the obligations of licensee under said license agreement, and shall be bound by all of the terms and conditions thereof to the same effect as if it originally had been named in said license agreement as licensee therein.

In witness whereof, the parties hereto have caused these presents to be signed by their respective Presidents, attested by their respective Secretaries, and their corporate seals to be hereunto affixed, in duplicate, the day and year first above written.

KELLEY PLASTERBOARD COMPANY, INC.
By VINCENT S. VILLARD,
Vice-President.

Attest:

F. H. MILES,
Assist Secretary.

NEWARK PLASTER COMPANY,
By FREDERICK TOMKINS,
Its President.

Attest:

CALVIN TOMKINS JR.
Secretary.

9567-A *Government's Exhibit No. 17*

FOIL BOARD LICENSE BETWEEN UNITED STATES GYPSUM COMPANY AND UNIVERSAL GYPSUM & LIME CO. DATED APRIL 4, 1935

9568 PLASTER BOARD AGREEMENT

This Agreement, made and entered into this 4th day of April A.D. 1935, by and between United States Gypsum Company, a corporation organized and existing under and by virtue of the laws of the State of Illinois and having its principal place of business at 300 West Adams Street, Chicago, Illinois, hereinafter referred to as the "Gypsum Company," and Universal Gypsum & Lime Co., a corporation organized and existing under and by virtue of the laws of the State of Delaware and having its principal place of business at 105 W. Madison St., Chicago, Illinois, hereinafter referred to as "Licensee," witnesseth:

Whereas, Gypsum Company is the owner of United States Letters Patent to Roos No. 1,914,345, relating to wall construction, and is also the owner of certain patent rights set forth in Schedule A hereunto annexed, relating to building structures or elements for said structures; and

Whereas, Licensee desires an indivisible and non-exclusive license from Gypsum Company, under the terms and conditions hereinafter set forth and as hereinafter specified, to manufacture, use and sell plasterboard under Said Roos Patent No. 1,914,345 and under said patent rights set forth in said Schedule A; and

Whereas, Gypsum Company is willing to grant such license, under the terms and conditions hereinafter set forth and as hereinafter specified,

Now, therefore, in consideration of the premises, the sum of One Dollar ($1.00) in hand paid, receipt of which is hereby acknowledged by Gypsum Company, and the mutual covenants herein contained, it is hereby agreed as follows:

9569 I

Gypsum Company hereby represents and warrants that it has the right to grant the license hereby granted.

II

The term "plaster board," as herein used, is intended to include material commonly known as plasterboard and also materials known as plaster wall board, plaster lath, and plaster sheathing boards.

III

Gypsum Company has agreed to and does hereby give and grant unto Licensee the indivisible, non-exclusive right, license and privilege to make, use and sell plaster board having a metallized surface embodying the inventions disclosed and claimed in said Roos Patent and in the patents or patent applications set forth in Schedule A, or in any of them; Provided, However, that the right, license and privilege herein and hereby granted is specifically limited to the plaster board and building structures incorporating the same as set forth in said Schedule A, and does not extend to any other product or structure.

IV

(a) It is expressly understood and agreed that the indivisible and non-exclusive rights, licenses and privileges aforesaid are granted, and they are hereby accepted, upon the express condition that Gypsum Company shall have, and it hereby reserves the right to determine and fix at any time, and to change from time to time, during the existence of said patents and so long as said rights, licenses and privileges granted hereunder shall continue, the minimum price or prices at which Licensee shall or may sell plaster board having a metallized surface which is covered by said Roos Patent or any of the said patents set forth in Schedule A, or which shall embody the inventions or improvements set forth and claimed in any patents issued upon any of the applications for patent set forth in said Schedule A, provided that the right hereinabove reserved to determine and fix the minimum price or prices of any such plas-
9570 ter board shall not be exercised with respect to any such plaster board embodying only the inventions or improvements, or one or more of them, set forth and claimed in any of the applications for patent set forth in

said Schedule A, prior to the date when the patent or patents shall have been granted or issued upon such application or applications, respectively.

(b) In the event Gypsum Company shall exercise the right thus reserved, namely, to determine and fix at any time, and to change from time to time, such minimum price or prices, it shall notify Licensee of its election to exercise such right, and shall include in such notice, or accompany such notice by, a statement of such minimum price or prices at which Licensee shall or may sell said plaster board having a metallized surface, manufactured by Licensee, and thereafter shall give License written or telegraphic notice of any change in such price or prices; and Licensee expressly covenants and agrees that it will not, so long at this agreement shall continue in force and effect, after receipt of such notice given in accordance with the terms and conditions hereof, directly or indirectly, sell or offer for sale any plaster board having a metallized surface manufactured by said Licensee embodying the inventions and improvements set forth in said Roos Patent or in any of said patents set forth in said Schedule A, or embodying the inventions or improvements set forth and claimed in any patents issued upon any applications for patent set forth in said Schedule A, at a price or prices less than that stated by Gypsum Company in said notice or in any such written or telegraphic notice of change in said price or prices. The said minimum price or prices at which Licensee shall or may sell said p' 'ented products as determined and fixed by Gypsum Company may be the same for all classes of trade, provided that Gypsum Company may, at any time and from time to time, determine and fix different prices for different classes of trade. It is further understood and agreed that any such minimum price or prices so determined and fixed by Gypsum Company may be
9571 made with respect to each trade market or place where said plaster board having a metallized surface may be sold, and may also be made with respect to different quantities purchased, such as carloads, less than carloads and truck loads, and that such minimum price or prices may differ in amount in each different market or place according to market conditions or quantities, all as may be determined by Gypsum Company.

(c) The said minimum price or prices so determined and fixed from time to time by Gypsum Company shall not

be more than the respective price or prices at which Gypsum Company itself determines to sell such products embodying the said inventions and improvements hereinbefore mentioned, to its own like trade in the same market.

(d) It is understood and agreed that all orders, contracts, or commitments for the future sale of said plaster board having a metallized surface and embodying the inventions and improvements hereinbefore mentioned shall be made subject to establishment of, and/or change in, such minimum price at which said materials or products may be sold, and that all shipments thereof shall be made at no less than the minimum price or prices contained in any notice of establishment of, and/or change in, price or prices received before shipment; provided, however, that on all orders taken for immediate shipment at not less than the minimum price, if any, then in effect, shipment thereof may be made at the price at which taken within five days of the date of such order; provided, further, that written contracts may be made at not less than the minimum price, if any, then in effect, to furnish such patented material for any specific work or job then contemplated or under construction; Provided, Further, that where contracts for specific work or jobs have been let to general contractors before notice of establishment of, and/or change in, price, then Licensee, if it has made a commitment for any such specific work or job prior to such notice, may at any time within thirty (30) days after such notice make a written contract to furnish the material for such specific work or job, at the price at which it was committed, 9572 but not less than the minimum price, if any, in effect at the time of such commitment. Within ten (10) days after each notice of minimum price or change thereof, Licensee will furnish to Gypsum Company a written statement of all specific work or jobs, contracts and commitments which Licensee had at the time such notice was given, showing the date of the contract or commitment, name of purchaser, location and description of specific work or job, quantity of material, and price at which the same was sold or commitment made, and shall immediately notify Gypsum Company of the making of any such contract for such specific work or job within the thirty-day term hereinbefore mentioned, and of the completion or abandonment of all specific work, jobs, contracts and commitments theretofore had by Licensee. It is understood and agreed that no such

contract or commitment shall be recognized as valid hereunder, unless the contract or commitment shall have been made in good faith before notice of making a price or change thereof, and unless such contract or commitment shall have been for some specific work or job then contemplated or under construction in which such patented material specified in the said contract or commitment is to be furnished or installed.

V

As consideration for the rights, licenses, and privileges herein granted to Licensee, Licensee agrees to pay royalty to Gypsum Company for all plaster board having a metallized surface manufactured and sold by Licensee and which are covered by claims of said Roos patent or patents set forth in the said Schedule A, or patents which may be issued under any of the applications set forth under said Schedule A, or which are to be used in making structures covered by said patent rights, at the rate of forty cents (40¢) per thousand square feet surface area where only one face is metallized, and at the rate of fifty cents (50¢) per thousand square feet where both faces are metallized, on any product covered by any of the patent rights aforesaid.

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VI

It is expressly understood that Licensee shall have no right, without the written consent of Gypsum Company first obtained, to manufacture any of said patented material for any other manufacturer of plaster board, whether or not licensed under said patents, or to sell such patented material to any other such manufacturer, or to deliver any of the same to any person, firm or corporation whatsoever on consignment.

VII

It is expressly understood and agreed that the rights, licenses and privileges herein granted are and shall be personal to Licensee, and none of said rights, licenses and privileges, nor any right herein or thereunder, shall be sold, assigned, or transferred without the written consent of Gypsum Company first obtained, nor shall Licensee permit the same, or any of them, to be transferred by operation of law: Provided, however, that such rights, licenses and privileges may be assigned by Licensee to any company acquiring all of the business and assets of said Licen-

see, on condition that Licensee shall first obtain an agreement in writing from any such assignee, in which such agreement such assignee agrees to assume all of the obligations of Licensee under this agreement and agrees to be bound by all of the terms and conditions hereof, and shall deliver such agreement to Gypsum Company.

VIII

In the event Gypsum Company shall, subsequent to the effective date hereof, grant to any other person, firm or corporation, any license under said Roos Patent or under said patents or applications for patent set forth in said Schedule A, for the manufacture, use, or sale of plaster board having a metallized surface, and embodying the claims or inventions set forth and claimed in said patents or said applications for patent, upon terms more favorable than those granted hereunder to Licensee, then Gypsum Company will grant to Licensee a license upon the same terms, or will extend to licensee the same right
9574 granted to such other licensee.

IX

Licensee agrees to keep true and accurate books of account showing the total amount of plaster board having a metallized surface manufactured and/or sold by Licensee under the rights, licenses and privileges herein granted, and the prices at which the same have been sold. Such books and records shall at all times during business hours be open to the inspection of Gypsum Company or its duly authorized representatives. Gypsum Company shall have the right to make copies of any such records and make memoranda therefrom, provided that if at the time of such examination Licensee shall so request, such examination shall be made by a certified public accountant satisfactory to Gypsum Company, in which event the expense of such examination by the said certified public accountant shall be borne by Licensee.

X

Licensee agrees that on or before the fifteenth day of each calendar month it will furnish to Gypsum Company a written report, under the hand and verification of some officer or other duly authorized agent of Licensee, showing the total amount of plaster board having a metallized surface sold by Licensee during the preceding calendar

month and which was manufactured by Licensee under the rights, licenses and privileges herein granted, and also showing whether such plaster board had one or two metallized surfaces, together with the prices at which the same shall have been sold, and at the time of furnishing such report, Licensee will pay to Gypsum Company the full royalty as herein provided for, such plaster board having a metallized surface so sold by Licensee during such preceding calendar month. Such reports shall be furnished to Gypsum Company at its principal office, at Chicago, Illinois.

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XI

Licensee expressly covenants and agrees that all sales by Licensee hereunder of plaster board having a metallized surface shall be bona fide sales thereof, and Licensee further expressly covenants and agrees that no such products shall be placed on consignment. For the purposes of this agreement, a sale shall be considered to have been made not later than the date on which the goods are shipped.

XII

Licensee agrees that all plaster board having a metallized surface sold by it hereunder shall be numbered with the respective numbers of any appropriate patents under which the rights, licenses and privileges herein granted are granted, and covering the manufacture, sale, or use thereof. Gypsum Company shall have the right from time to time to specify the substance of the notice with which said products shall be so marked.

XIII

As one of the considerations for the indivisible and non-exclusive rights, licenses and privileges herein and hereby granted to Licensee, Licensee agrees that it will not at any time during the life of this agreement, or during the existence of said rights, licenses and privileges, directly or indirectly, by itself or through or together with another or others, contest the validity of said letters patent, or of said patent rights, or of any letters patent hereafter issued upon said applications so set forth in said Schedule A, or the right or title of Gypsum Company therein or thereto as herein or as in said Schedule A set forth, but in the event that any of said patents under which Licensee is licensed hereunder is held invalid or of limited construction by a

court of competent jurisdiction from whose decision no appeal is or can be taken, then the Licensee shall have the right to make, use or vend the structure so held to be outside of the scope of said patent rights, free and clear
9576 of the terms of this agreement.

Licensee agrees to give prompt notice of any suit or action which shall be brought against it in consequence of practicing the inventions set forth in said patents and said patent rights, and thereupon, if Gypsum Company shall desire to conduct the defense of such suit or action, it shall have the right to do so, but Licensee shall have the right, in such event, to be represented in such suit or action, at its own expense, by counsel of its own selection. Gypsum Company shall not, by undertaking to conduct the defense of any such suit or action, be under any obligation to indemnify the Licensee against any judgment, order or decree or other result therein.

XIV

(a) In the event Licensee shall fail to make any report or shall fail to pay the royalty herein provided to be paid, or in the event that Licensee shall sell any of the materials covered by the price restriction provisions of Paragraph IV hereof, at a price or prices lower than the specified price or prices established and fixed by Gypsum Company as herein provided, Gypsum Company shall have the right to cancel all of the rights, licenses and privileges herein granted to Licensee; provided, however, that Licensee shall not be relieved thereby from any liability accrued at the time of such cancellation. In the event of any such breach, Gypsum Company shall give written notice to Licensee of the default or defaults claimed by Gypsum Company to have occurred, and of the desire of Gypsum Company to cancel the rights, licenses and privileges of Licensee hereunder; and if Licensee shall not make good the default or defaults complained of within a period of thirty (30) days from the giving of such notice, then all of the rights, licenses and privileges of Licensee hereunder shall forthwith cease and terminate without further action on the part of Gypsum Company; provided, however, that if, upon the giving of any such notice, Licensee shall deny that the
9577 defaults, or any of them, complained of have occurred, then the question as to whether the default or defaults, the occurrence of which is so denied by Licensee, have in fact occurred, shall be referred to arbitration under Paragraph XV hereof.

(b) In the event that such arbiters find that such default or defaults have occurred, then Licensee shall promptly cure the same, and in any event shall cure the same within thirty (30) days from the date of the finding of such arbiters; and in the event such default or defaults shall not be so cured within the time limited, then the rights, licenses and privileges herein granted to Licensee shall forthwith cease and determine without further action on the part of Gypsum Company; the termination of said rights, licenses and privileges following the finding of the arbiters as aforesaid shall not release Licensee from any liability then existing.

(c) In the event (1) that Licensee shall be adjudicated a bankrupt, or (2) a receiver shall be appointed for licensee, whose appointment shall not be vacated within sixty (60) days thereafter, then the rights, licenses and privileges herein granted to Licensee shall forthwith cease and determine, without further action on the part of Gypsum Company, provided that such termination shall not relieve Licensee of any and all liability then existing.

(d) The waiver by Gypsum Company of any breach on the part of Licensee shall not be interpreted as constituting a waiver of any further or other breach or breaches.

(e) In the event any default shall have occurred as specified in sub-paragraph (a) of this Paragraph XIV, Gypsum Company may give notice of such default without stating its desire to terminate the rights, licenses and privileges herein granted to Licensee, and in the event such defaults shall not be cured by Licensee within the times mentioned in said sub-paragraph (a), Gypsum Com-
9578 pany shall have the right, without terminating the said rights, licenses and privileges herein granted to Licensee, to maintain any appropriate action hereunder, at law or in equity, for the collection of license fees or royalties, or for damages, or for any other remedy as may be appropriate. The provisions mentioned in said sub-paragraph (a) with respect to arbitrating the fact as to whether any default or defaults complained of has or have in fact occurred, shall be applicable in all respects in the event notice of default is given without any statement by Gypsum Company of its desire to terminate the rights, licenses and privileges herein granted to Licensee, excepting that if the arbiters shall find that any of said defaults complained of shall have occurred, then Gypsum Company shall

have the same right, without a termination of said rights, licenses and privileges so granted to Licensee, to maintain its appropriate action hereunder.

XV

Any question subject to arbitration under any provision of this contract shall be arbitrated in accordance with the rules then obtaining of the American Arbitration Association. The finding or findings of the arbiters with respect to the occurrence or non-occurrence of any claimed default, shall be final and conclusive. In the event the finding or findings of the arbiters shall be with respect to any default or defaults, or claimed default or defaults, in the payment of royalties or other sums of money herein required to be paid by the Licensee to Gypsum Company and the arbiters shall find that such default or defaults shall have occurred, the arbiters shall in their finding fix and determine the amount of royalties or other sums of money due from License to Gypsum Company, whereupon Licensee will promptly pay the same to Gypsum Company, and in any event will pay the same within the times hereinbefore mentioned in Paragraph XIV hereof for the curing of defaults, provided that Gypsum Company shall have the right (but without being limited to such remedy) to have a summary judgment entered in its favor against Licensee for
9579 the amount so found to be due by the arbiters in any court of competent jurisdiction.

XVI

Any notice to be given under the terms hereof may be served by either party by mailing such notice to the other party hereto, by registered mail, postage prepaid, addressed to such party at its last known principal office, and the deposit of any such notice in the United States mails, registered, postage prepaid, and so addressed, shall constitute service of notice hereunder. Any telegraphic notice given under Paragraph IV hereof shall be confirmed in writing. Either party may change, from time to time, the address to which all notices shall be mailed, provided that in the absence of any different address, the respective addresses herein first above stated shall be the adresses to which such notices shall be mailed.

XVII

Except as herein otherwise expressly provided, this agreement shall remain in force for the full term of

each patent under which the respectitve rights, licenses and privileges are hereby granted, and shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns, provided, however, that nothing in this Paragraph XVII contained shall be construed to permit any assignment hereof or of any of the rights, licenses, and privileges herein granted, except as herein otherwise specifically provided. Nothing herein contained shall be construed as extending any license for the manufacture and/or use and/or sale of plaster board not having a metallized surface heretofore or hereafter granted under any other agreement between the parties hereto.

In the event that the exclusive right and license of the Gypsum Company, as set forth in said Schedule A hereto, shall for any reason whatsoever (whether on account of the default of the Gypsum Company or otherwise) 9580 terminate, and such termination shall have the effect of terminating or shall result in the termination of any of the rights, licenses and privileges herein granted to the Licensee, then this agreement shall immediately terminate, without further act on the part of either of the parties hereto, provided that Licensee shall not be relieved thereby from any liability then existing, and provided further that Gypsum Company shall not be liable in any way to Licensee on account of such termination. Gypsum Company agrees that if its said exclusive right and license shall so be terminated, it will promptly notify Licensee of such termination.

XVIII

Anything hereinabove contained to the contrary notwithstanding, this agreement and the rights, licenses and privileges herein granted to the Licensee may be cancelled and terminated, at any time, by either party hereto, by at least ninety (90) days' prior written notice to the other party of the election of the party serving the notice to exercise such right of cancellation and of the date on which such cancellation shall be effective, but such cancellation shall not relieve either party from any liability accrued or due at the date of such cancellation; Provided, However, that if Gypsum Company shall exercise the right to cancel this agreement as in this paragraph provided, then within ninety (90) days of its said notice it will submit to Licensee a new contract embodying a proposal for a non-exclusive license under said patents

for the life of said patents, for acceptance by Licensee within ten (10) days from the date of such submittal.

In witness whereof, the parties hereto have caused these presents to be signed by their respective Presidents, attested by their respective Secretaries, and their corporate seals to be hereunto affixed, in duplicate, the day and year first above written.

9581 UNITED STATES GYPSUM COMPANY,
By C. F. HENNING,
Its Vice President.

ATTEST:
C. H. SHAVER,
Secretary.

[SEAL]

UNIVERSAL GYPSUM & LIME CO.
By EUGENE HOLLAND,
Its President.

ATTEST:
C. J. SIMMONS,
Secretary.

[SEAL]

9582 SCHEDULE A

The Gypsum Company has the exclusive right and license to make, use and sell building structures or elements for building structures where insulation is obtained by the use of plaster board having a metallized surface under the following patents and applications for patents known as the Alfol patents.

PATENTS

Inventor	*Patent No.*	*Issue Date*
E. Schmidt, et al	1,757,479	May 5, 1930
E. Schmidt	1,890,418	Dec. 6, 1932
Eduard Dyckerhoff	1,934,174	Nov. 7, 1933

APPLICATIONS

Inventor	*Serial No.*	*Filing Date*
Schmidt, et al	105,753	April 30, 1926
Eduard Dyckerhoff	442,219	April 7, 1930
Ernst Schmidt	663,572	March 30, 1933

together with any divisions, continuations, renewals or reissues thereof, but it is understood that the term "building structures" is limited to the walls, floors, roofs and ceilings of buildings and does not include pipes or ducts or other heating apparatus installed in the building or refrigerating or cooling apparatus or structures whether built into the building or not, and it is further understood that Gypsum Company has no right or license under said patents or applications to use metal foil for insulators except where such foil is applied to a non-metallic member as a facing therefor.

9583 *Government's Exhibit No. 18*

PLASTER BOARD AGREEMENT

This agreement, made and entered into this 30th day of November A. D. 1934, by and between United States Gypsum Company, a corporation organized and existing under and by virtue of the laws of the State of Illinois and having its principal place of business at 300 West Adams Street, Chicago, Illinois, hereinafter referred to as the "Gypsum Company," and Atlantic Gypsum Products Company, a corporation organized and existing under and by virtue of the laws of the State of New Hampshire and having its principal place of business at Boston, Massachusetts, hereinafter referred to as "Licensee," witnesseth:

Whereas, Gypsum Company is the owner of United States Letters Patent to Roos No. 1,914,345, relating to wall construction, and is also the owner of certain patent rights set forth in Schedule A hereunto annexed, relating to building structures or elements for said structures; and

Whereas, Licensee desires an indivisible and non-exclusive license from Gypsum Company, under the terms and conditions hereinafter set forth and as hereinafter specified, to manufacture, use and sell plaster board under said Roos Patent No. 1,914,345 and under said patent rights set forth in said Schedule A; and

Whereas, Gypsum Company is willing to grant such license, under the terms and conditions hereinafter set forth and as hereinafter specified,

Now, therefore, in consideration of the premises, the sum of One Dollar ($1.00) in hand paid, receipt of

9584 which is hereby acknowledged by Gypsum Company, and the mutual covenants herein contained, it is hereby agreed as follows:

I

Gypsum Company hereby represents and warrants that it has the right to grant the license hereby granted.

II

The term "plaster board," as herein used, is intended to include material commonly known as plasterboard and also materials known as plaster wall board, plaster lath, and plaster sheathing boards.

III

Gypsum Company has agreed to and does hereby give and grant unto Licensee the indivisible, non-exclusive right, license and privilege to make, use and sell plaster board having a metallized surface embodying the inventions disclosed and claimed in said Roos Patent and in the patents or patent applications set forth in Schedule A, or in any of them; Provided, However, that the right, license and privilege herein and hereby granted is specifically limited to the plaster board and building structures incorporating the same as set forth in said Schedule A, and does not extend to any other product or structure.

IV

(a) It is expressly understood and agreed that the indivisible and non-exclusive rights, licenses and privileges aforesaid are granted, and they are hereby accepted, upon the express condition that Gypsum Company shall have, and it hereby reserves, the right to determine and fix at any time, and to change from time to time, during the existence of said patents and so long as said rights, licenses and privileges granted hereunder shall
9585 continue, the minimum price or prices at which Licensee shall or may sell plaster board having a metallized surface which is covered by said Roos Patent or any of the said patents set forth in Schedule A, or which shall embody the inventions or improvements set forth and claimed in any patents issued upon any of the applications for patent set forth in said Schedule A, provided that the right hereinabove reserved to determine and fix the minimum price or prices of any such plaster

board shall not be exercised with respect to any such plaster board embodying only the inventions or improvements, or one or more of them, set forth and claimed in any of the applications for patent set forth in said Schedule A, prior to the date when the patent or patents shall have been granted or issued upon such application or applications, respectively.

(b) In the event Gypsum Company shall exercise the right thus reserved, namely, to determine and fix at any time, and to change from time to time, such minimum price or prices, it shall notify Licensee of its election to exercise such right, and shall include in such notice, or accompany such notice by, a statement of such minimum price or prices at which Licensee shall or may sell said plaster board having a metallized surface, manufactured by Licensee, and thereafter shall give Licensee written or telegraphic notice of any change in such price or prices; and Licensee expressly covenants and agrees that it will not, so long as this agreement shall continue in force and effect, after receipt of such notice given in accordance with the terms and conditions hereof, directly or indirectly, sell or offer for sale any plaster board having a metallized surface manufactured by said Licensee embodying the inventions and improvements set forth in said Roos Patent or in any of said
9586 patents set forth in said Schedule A, or embodying the inventions or improvements set forth and claimed in any patents issued upon any applications for patent set forth in said Schedule A, at a price or prices less than that stated by Gypsum Company in said notice or in any such written or telegraphic notice of change in said price or prices. The said minimum price or prices at which Licensee shall or may sell said patented products as determined and fixed by Gypsum Company may be the same for all classes of trade, provided that Gypsum Company may, at any time and from time to time, determine and fix different prices for different classes of trade. It is further understood and agreed that any such minimum price or prices so determined and fixed by Gypsum Company may be made with respect to each trade market or place where said plaster board having a metallized surface may be sold, and may also be made with respect to different quantities purchased, such as carloads, less than carloads and truck loads, and that such minimum price or prices may differ

in amount in each different market or place according to market conditions or quantities, all as may be determined by Gypsum Company.

(c) The said minimum price or prices so determined and fixed from time to time by Gypsum Company shall not be more than the respective price or prices at which Gypsum Company itself determines to sell such products embodying the said inventions and improvements hereinbefore mentioned, to its own like trade in the same market.

(d) It is understood and agreed that all orders, contracts, or commitments for the future sale of said plaster board having a metallized surface and embodying the inventions and improvements hereinbefore mentioned shall be made subject to establishment of, and/or change in, such minimum price at which said materials or products may be sold, and that all shipments thereof shall
9587 be made at no less than the minimum price or prices contained in any notice of establishment of, and/or change in, price or prices received before shipment; provided, however, that on all orders taken for immediate shipment at not less than the minimum price, if any, then in effect, shipment thereof may be made at the price at which taken within five days of the date of such order; provided, further, that written contracts may be made at not less than the minimum price, if any, then in effect, to furnish such patented material for any specific work or job then contemplated or under construction; Provided, Further, that where contracts for specific work or jobs have been let to general contractors before notice of establishment of, and/or change in, price, then Licensee, if it has made a commitment for any such specific work or job prior to such notice, may at any time within thirty (30) days after such notice make a written contract to furnish the material for such specific work or job, at the price at which it was committed, but not less than the minimum price, if any, in effect at the time of such commitment. Within ten (10) days after each notice of minimum price or change thereof, Licensee will furnish to Gypsum Company a written statement of all specific work or jobs, contracts and commitments which Licensee had at the time such notice was given, showing the date of the contract or commitment, name of purchaser, location and description of specific work or job, quantity of material, and price at which the same was sold or

commitment made, and shall immediately notify Gypsum Company of the making of any such contract for such specific work or job within the thirty-day term hereinbefore mentioned, and of the completion or abandonment of all specific work, jobs, contracts and commitments theretofore had by Licensee. It is understood and agreed
that no such contract or commitment shall be rec-
9588 ognized as valid hereunder, unless the contract
or commitment shall have been made in good faith before notice of making a price or change thereof, and unless such contract or commitment shall have been for some specific work or job then contemplated or under construction in which such patented material specified in the said contract or commitment is to be furnished or installed.

V

As consideration for the rights, licenses, and privileges herein granted to Licensee, Licensee agrees to pay royalty to Gypsum Company for all plaster board having a metallized surface manufactured and sold by Licensee and which are covered by claims of said Roos patent or patents set forth in the said Schedule A, or patents which may be issued under any of the applications set forth under said Schedule A, or which are to be used in making structures covered by said patent rights, at the rate of forty cents (40¢) per thousand square feet surface area where only one face is metallized, and at the rate of fifty cents (50¢) per thousand square feet where both faces are metallized, on any product covered by any of the patent rights aforesaid.

VI

It is expressly understood that Licensee shall have no right, without the written consent of Gypsum Company first obtained, to manufacture any of said patented material for any other manufacturer of plaster board, whether or not licensed under said patents, or to sell such patented material to any other such manufacturer, or to deliver any of the same to any person, firm or corporation whatsoever on consignment.

VII

It is expressly understood and agreed that the
9589 rights, licenses and privileges herein granted are and shall be personal to Licensee, and none of said

rights, licenses and privileges, nor a · right herein or thereunder, shall be sold, assigned, or transferred without the written consent of Gypsum Company first obtained, nor shall Licensee permit the same, or any of them, to be transferred by operation of law; Provided, however, that such rights, licenses, and privileges may be assigned by Licensee to any company acquiring all of the business and assets of said Licensee, on condition that Licensee shall first obtain an agreement in writing from any such assignee, in which such agreement such assignee agrees to assume all of the obligations of Licensee under this agreement and agrees to be bound by all of the terms and conditions hereof, and shall deliver such agreement to Gypsum Company.

VIII

In the event Gypsum Company shall, subsequent to the effective date hereof, grant to any other person, firm or corporation, any license under said Roos Patent or under said patents or applications for patent set forth in said Schedule A, for the manufacture, use, or sale of plaster board having a metallized surface, and embodying the claims or inventions set forth and claimed in said patents or said applications for patent, upon terms more favorable than those granted hereunder to Licensee, then Gypsum Company will grant to Licensee a license upon the same terms, or will extend to Licensee the same right granted to such other licensee.

IX

Licensee agrees to keep true and accurate books of account, showing the total amount of plaster board having a metallized surface manufactured and/or sold by
9590 Licensee under the rights, licenses and privileges herein granted, and the prices at which the same have been sold. Such books and records shall at all times during business hours be open to the inspection of Gypsum Company or its duly authorized representatives. Gypsum Company shall have the right to make copies of any of such records and make memoranda therefrom, provided that if at the time of such examination Licensee shall so request, such examination shall be made by a certified public accountant satisfactory to Gypsum Company, in which event the expense of such examination by the said certified public accountant shall be borne by Licensee.

X

Licensee agrees that on or before the fifteenth day of each calendar month it will furnish to Gypsum Company a written report, under the hand and verification of some officer or other duly authorized agent of Licensee, showing the total amount of plaster board having a metallized surface sold by Licensee during the preceding calendar month and which was manufactured by Licensee under the rights, licenses and privileges herein granted, and also showing whether such plaster board had one or two metallized surfaces, together with the prices at which the same shall have been sold, and at the time of furnishing such report, Licensee will pay to Gypsum Company the full royalty as herein provided for such plaster board having a metallized surface so sold by Licensee during such preceding calendar month. Such reports shall be furnished to Gypsum Company at its principal office, at Chicago, Illinois.

XI

Licensee expressly covenants and agrees that all sales by Licensee hereunder of plaster board having a metallized surface shall be bona fide sales thereof, and
9591 Licensee further expressly covenants and agrees that no such products shall be placed on consignment. For the purposes of this agreement, a sale shall be considered to have been made not later than the date on which the goods are shipped.

XII

Licensee agrees that all plaster board having a metallized surface sold by it hereunder shall be numbered with the respective numbers of any appropriate patents under which the rights, licenses and privileges herein granted are granted, and covering the manufacture, sale, or use thereof. Gypsum Company shall have the right from time to time to specify the substance of the notice with which said products shall be so marked.

XIII

As one of the considerations for the indivisible and non-exclusive rights, licenses and privileges herein and hereby granted to Licensee, Licensee agrees that it will not at any time during the life of this agreement, or during the existence of said rights, licenses and privi-

leges, directly or indirectly, by itself or through or together with another or others, contest the validity of said letters patent, or of said patent rights, or of any letters patent hereafter issued upon said applications so set forth in said Schedule A, or the right or title of Gypsum Company therein or thereto as herein or as in said Schedule A set forth, but in the event that any of said patents under which Licensee is licensed hereunder is held invalid or of limited construction by a court of competent jurisdiction from whose decision no appeal is or can be taken, then the Licensee shall have the right to make, use or vend the structure so held to be outside of the scope of said patent rights, free and clear of the terms of this agreement.

9592 Licensee agrees to give prompt notice of any suit or action which shall be brought against it in consequence of practicing the inventions set forth in said patents and said patent rights, and thereupon, if Gypsum Company shall desire to conduct the defense of such suit or action, it shall have the right to do so, but Licensee shall have the right, in such event, to be represented in such suit or action, at its own expense, by counsel of its own selection. Gypsum Company shall not, by undertaking to conduct the defense of any such suit or action, be under any obligation to indemnify the Licensee against any judgment, order or decree or other result therein.

XIV

(a) In the event Licensee shall fail to make any report or shall fail to pay the royalty herein provided to be paid, or in the event that Licensee shall sell any of the materials covered by the price restriction provisions of Paragraph IV hereof, at a price or prices lower than the specified price or prices established and fixed by Gypsum Company as herein provided, Gypsum Company shall have the right to cancel all of the rights, licenses and privileges herein granted to Licensee; provided, however, that Licensee shall not be relieved thereby from any liability accrued at the time of such cancellation. In the event of any such breach, Gypsum Company shall give written notice to Licensee of the default or defaults claimed by Gypsum Company to have occurred, and of the desire of Gypsum Company to cancel the rights, licenses and privileges of Licensee hereunder; and if Licensee shall not make good the default or defaults com-

plained of within a period of thirty (30) days from the giving of such notice, then all of the rights, licenses and privileges of Licensee hereunder shall forthwith cease and terminated without further action on the part
9593 of Gypsum Company; provided, however, that if, upon giving of any such notice, Licensee shall deny that the defaults, or any of them, complained of have occurred, then the question as to whether the default or defaults, the occurrence of which is so denied by Licensee, have in fact occurred, shall be referred to arbitration under Paragraph XV hereof.

(b) In the event that such arbiters find that such default or defaults have occurred, then Licensee shall promptly cure the same, and in any event shall cure the same within thirty (30) days from the date of the finding of such arbiters; and in the event such default or defaults shall not be so cured within the time limited, then the rights, licenses and privileges herein granted to Licensee shall forthwith cease and determine without further action on the part of Gypsum Company; the termination of said rights, licenses and privileges following the finding of the arbiters as aforesaid shall not release Licensee from any liability then existing.

(c) In the event (1) that Licensee shall be adjudicated a bankrupt, or (2) a receiver shall be appointed for Licensee, whose appointment shall not be vacated within sixty (60) days thereafter, then the rights, licenses and privileges herein granted to Licensee shall forthwith cease and determine, without further action on the part of Gypsum Company, provided that such termination shall not relieve Licensee of any and all liability then existing.

(d) The waiver by Gypsum Company of any breach on the part of Licensee shall not be interpreted as constituting a waiver of any further or other breach or breaches.

(e) In the event any default shall have occurred as specified in sub-paragraph (a) of this Paragraph XIV, Gypsum Company may give notice of such default without stating its desire to terminate the rights, li-
9594 censes and privileges herein granted to Licensee, and in the event such defaults shall not be cured by Licensee within the times mentioned in said sub-paragraph (a), Gypsum Company shall have the right, without

terminating the said rights, licenses and privileges herein granted to Licensee, to maintain any appropriate action hereunder, at law or in equity, for the collection of license fees or royalties, or for damages, or for any other remedy as may be appropriate. The provisions mentioned in said sub-paragraph (a) with respect to arbitrating the fact as to whether any default or defaults complained of has or have in fact occurred, shall be applicable in all respects in the event notice of default is given without any statement by Gypsum Company of its desire to terminate the rights, licenses and privileges herein granted to Licensee, excepting that if the arbiters shall find that any of said defaults complained of shall have occurred, then Gypsum Company shall have the same right, without a termination of said rights, licenses and privileges so granted to Licensee, to maintain its appropriate action hereunder.

XV

Any question subject to arbitration under any provision of this contract shall be arbitrated in accordance with the rules then obtaining of the American Arbitration Association. The finding or findings of the arbiters with respect to the occurrence or non-occurrence of any claimed default, shall be final and conclusive. In the event the finding or findings of the arbiters shall be with respect to any default or defaults, or claimed default or defaults, in the payment of royalties or other sums of money herein required to be paid by the Licensee to Gypsum Company and the arbiters shall find that such default or defaults shall have occurred, the arbiters shall in their finding fix and determine the amount of royalties or other sums of money due from License to Gypsum Company, whereupon Licensee will promptly pay the same to Gypsum Company, and in any event will pay the same within the times hereinbefore mentioned in Paragraph XIV hereof for the curing of defaults, provided that Gypsum Company shall have the right (but without being limited to such remedy) to have a summary judgment entered in its favor against Licensee for the amount so found to be due by the arbiters in any court of competent jurisdiction.

9595

XVI

Any notice to be given under the terms hereof may be served by either party by mailing such notice to the other

party hereto, by registered mail, postage prepaid, addressed to such party at its last known principal office, and the deposit of any such notice in the United States mails, registered, postage prepaid, and so addressed, shall constitute service of notice hereunder. Any telegraphic notice given under Paragraph IV hereof shall be confirmed in writing. Either party may change, from time to time, the address to which all notices shall be mailed, provided that in the absence of any different address, the respective addresses herein first above stated shall be the addresses to which such notices shall be mailed.

XVII

Except as herein otherwise expressly provided, this agreement shall remain in force for the full term of each patent under which the respective rights, licenses and privileges are hereby granted, and shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns, provided, however, that nothing in this Paragraph XVII contained shall be construed to permit any assignment hereof or of any of the rights, licenses, and privileges herein granted, except as herein otherwise specifically provided. Nothing herein contained shall be construed as extending any license for the
9596 manufacture and/or use and/or sale of plaster board not having a metallized surface heretofore or hereafter granted under any other agreement between the parties hereto.

In the event that the exclusive right and license of the Gypsum Company, as set forth in said Schedule A hereto, shall for any reason whatsoever (whether on account of the default of the Gypsum Company or otherwise) terminate, and such termination shall have the effect of terminating or shall result in the termination of any of the rights, licenses and privileges herein granted to the Licensee, then this agreement shall immediately terminate, without further act on the part of either of the parties hereto, provided that Licensee shall not be relieved thereby from any liability then existing, and provided further that Gypsum Company shall not be liable in any way to Licensee on account of such termination. Gypsum Company agrees that if its said exclusive right and license shall so be terminated, it will promptly notify Licensee of such termination.

XVIII

Anything hereinabove contained to the contrary notwithstanding, this agreement and the rights, licenses and privileges herein granted to the Licensee may be cancelled and terminated, at any time, by either party hereto, by at least ninety (90) days' prior written notice to the other party of the election of the party serving the notice to exercise such right of cancellation and of the date on which such cancellation shall be effective, but such cancellation shall not relieve either party from any liability accrued or due at the date of such cancellation; Provided, However, that if Gypsum Company shall exercise the right to cancel this agreement as in this paragraph provided, then within ninety (90) days of its said notice it will
9597 submit to Licensee a new contract embodying a proposal for a non-exclusive license under said patents for the life of said patents, for acceptance by Licensee within ten (10) days from the date of such submittal.

In witness whereof, the parties hereto have caused these presents to be signed by their respective Presidents, attested by their respective Secretaries, and their corporate seals to be hereunto affixed, in duplicate, the day and year first above written.

UNITED STATES GYPSUM COMPANY
By C. F. HENNING,
Its President.

ATTEST:
C. H. SHAVER,
Secretary.

ATLANTIC GYPSUM PRODUCTS CO.
By WILLARD P. FULLER,
Its President.

ATTEST:
CLAIR A. HANEN,
Secretary.

9598 SCHEDULE A

The Gypsum Company has the exclusive right and license to make, use and sell building structures or elements for building structures where insulation is obtained by the use of plaster board having a metallized surface uder the following patents and applications for patents known as the Alfol patents.

PATENTS

Inventor	*Patent No.*	*Issue Date*
E. Schmidt, et al	1,757,479	May 5, 1930
E. Schmidt	1,890,418	Dec. 6, 1932
Eduard Dyckerhoff	1,934,174	Nov. 7, 1933

APPLICATIONS

Inventor	*Ser. No.*	*Filing Date*
Schmidt, et al	105,753	April 30, 1926
Eduard Dyckerhoff	442,219	April 7, 1930
Ernst Schmidt	663,572	March 30, 1933

together with any divisions, continuations, renewals or reissues thereof, but is is understood that the term "building structures" is limited to the walls, floors, roofs and ceilings of buildings and does not include pipes or ducts or other heating apparatus installed in the building or refrigerating or cooling apparatus or structures whether built into the building or not, and it is further understood that Gypsum Company has no right or license under said patents or applications to use metal foil for insulators except where such foil is applied to a non-metallic member as a facing therefor.

9599 *Government's Exhibit No. 19*

AGREEMENT

This Agreement, made and entered into this 5th day of October, A. D. 1934, by and between United States Gypsum Company, a corporation organized and existing under and by virtue of the laws of the State of Illinois and having its principal place of business at 300 West Adams Street, Chicago, Illinois, hereinafter referred to as the "Gypsum Company," and National Gypsum Company, a corporation organized and existing under and by virtue of the laws of the State of Delaware and having its principal place of business at 188 Delaware Avenue, Buffalo, New York, hereinafter referred to as "Licensee," Witnesseth:

Whereas, Gypsum Company is the owner of United States Letters Patent to Roos No. 1,914,345, relating to wall construction, and is also the owner of certain patent rights set forth in Schedule A hereunto annexed, relating to building structures or elements for said structures; and

Whereas, Licensee desires an indivisible and non-exclusive license from Gypsum Company, under the terms and conditions hereinafter set forth and as hereinafter

specified, to manufacture, use and sell plaster board under said Roos Patent No. 1,914,345 and under said patent rights set forth in said Schedule A; and

Whereas, Gypsum Company is willing to grant such license, under the terms and conditions hereinafter set forth and as hereinafter specified,

Now, Therefore, in consideration of the premises, the sum of One Dollar ($1.00) in hand paid, receipt of
9600 which is hereby acknowledged by Gypsum Company, and the mutual covenants herein contained, it is hereby agreed as follows:

I

Gypsum Company hereby represents and warrants that it has the right to grant the license hereby granted.

II

The term "plaster board," as herein used, is intended to include material commonly known as plaster board and also materials known as plaster wall board, plaster lath, and plaster sheathing boards.

III

Gypsum Company has agreed to and does hereby give and grant unto Licensee the indivisible, non-exclusive right and privilege to make, use and sell plaster board having a metallized surface embodying the inventions disclosed and claimed in said Roos Patent and in the patents or patent applications set forth in Schedule A, or in any of them; provided, however, that the right, license and privilege herein and hereby granted is specifically limited to the plaster board and building structures incorporating the same as covered by the patents or patent rights set forth in Schedule A, and does not extend to any other product or structure.

IV

(a) It is expressly understood and agreed that the indivisible and non-exclusive rights, licenses and privileges aforesaid are granted, and they are hereby accepted, upon the express condition that Gypsum Company shall have, and it hereby reserves, the right to determine and fix at any time, and to change from time to time, during the existence of said patents and so long as said rights,

licenses and privileges granted hereunder shall
9601 continue, the minimum price or prices at which Licensee shall or may sell plaster board having a metallized surface which is covered by said Roos Patent or any of the said patents set forth in Schedule A, or which shall embody the inventions or improvements set forth and claimed in any patents issued upon any of the applications for patent set forth in said Schedule A, provided that the right hereinabove reserved to determine and fix the minimum price or prices of any such plaster board shall not be exercised with respect to any such plaster board embodying only the inventions or improvements, or one or more of them, set forth and claimed in any of the applications for patent set forth in said Schedule A, prior to the date when the patent or patents shall have been granted or issued upon such application or applications, respectively.

(b) In the event Gypsum Company shall exercise the right thus reserved, namely, to determine and fix at any time, and to change from time to time, such minimum price or prices, it shall notify Licensee of its election to exercise such right, and shall include in such notice, or accompany such notice by, a statement of such minimum price or prices at which Licensee shall or may sell said plaster board having a metallized surface, manufactured by Licensee, and thereafter shall give Licensee written or telegraphic notice of any change in such price or prices; and Licensee expressly covenants and agrees that it will not, so long as this agreement shall continue in force and effect, after receipt of such notice given in accordance with the terms and conditions hereof, directly or indirectly, sell of offer for sale any plaster board having a metallized surface manufactured by said Licensee embodying the inventions and improvements set forth in said Roos Patent or in any of said patents set forth in said Schedule
9602 A, or embodying the inventions or improvements set forth and claimed in any patents issued upon any applications for patent set forth in said Schedule A, at a price or prices less than that stated by Gypsum Company in said notice or in any such written or telegraphic notice of change in said price or prices. The said minimum price or prices at which Licensee shall or may sell said patented products as determined and fixed by Gypsum Company may be the same for all classes of trade, provided that Gypsum Company may, at any time and from time to

time, determine and fix different prices for different classes of trade. It is further understood and agreed that any such minimum price or prices so determined and fixed by Gypsum Company may be made with respect to each trade market or place where said plaster board having a metallized surface may be sold, and may also be made with respect to different quantities purchased, such as carloads, less than carloads and truck loads, and that such minimum price or prices may differ in amount in each different market or place according to market conditions or quantities, all as may be determined by Gypsum Company.

(c) The said minimum price or prices so determined and fixed from time to time by Gypsum Company shall not be more than the respective price or prices at which Gypsum Company itself determines to sell such products embodying the said inventions and improvements hereinbefore mentioned, to its own like trade in the same market.

(d) It is understood and agreed that all orders, contracts, or commitments for the future sale of said plaster board having a metallized surface and embodying the inventions and improvements hereinbefore mentioned shall be made subject to establishment of, and/or change in, such minimum price at which said materials or products may be sold, and that all shipments thereof shall be
9603 made at no less than the minimum price or prices contained in any notice of establishment of, and/or change in, price or prices received before shipment; provided, however, that on all orders taken for immediate shipment at not less than the minimum price, if any, then in effect, shipment thereof may be made at the price at which taken within five days of the date of such order; provided, further, that written contracts may be made at not less than the minimum price, if any, then in effect, to furnish such patented material for any specific work or job then contemplated or under construction; provided, further, that where contracts for specific work or jobs have been let to general contractors before notice of establishment of, and/or change in, price, then Licensee, if it has made a commitment for any such specific work or job prior to such notice, may at any time within thirty (30) days after such notice make a written contract to furnish the material for such specific work or job, at the price at which it was committed, but not less than the

minimum price, if any, in effect at the time of such commitment. Within ten (10) days after each notice of minimum price or change thereof, Licensee will furnish to Gypsum Company a written statement of all specific work or jobs, contracts and commitments which Licensee had at the time such notice was given, showing the date of the contract or commitment, name of purchaser, location and description of specific work or job, quantity of material, and price at which the same was sold or commitment made, and shall immediately notify Gypsum Company of the making of any such contract for such specific work or job within the thirty-day term hereinbefore mentioned, and of the completion or abandonment of all specific work, jobs, contracts and commitments theretofore had by Licensee. It is understood and agreed that no such contract or commitment shall be recognized as
9604 valid hereunder, unless the contract or commitment shall have been made in good faith before notice of making a price or change thereof, and unless such contract or commitment shall have been for some specific work or job then contemplated or under construction in which such patented material specified in the said contract or commitment is to be furnished or installed.

V

As consideration for the rights, licenses, and privileges herein granted to Licensee, Licensee agrees to pay royalty to Gypsum Company for all plaster board having a metallized surface manufactured and sold by Licensee and which are covered by claims of said Roos patent or patents set forth in the said Schedule A, or patents which may be issued under any of the applications set forth under said Schedule A, or which are to be used in making structures covered by said patent rights, at the rate of forty cents (40¢) per thousand square feet surface area where only one face is metallized, and at the rate of fifty cents (50¢) per thousand square feet where both faces are metallized, on any product covered by any of the patent rights aforesaid.

VI

It is expressly understood that Licensee shall have no right, without the written consent of Gypsum Company first obtained, to manufacture any of said patented material for any other manufacturer of plasterboard, whether or

not licensed under said patents, or to sell such patented material to any other such manufacturer, or to deliver any of the same to any person, firm or corporation whatsoever on consignment.

VII

It is expressly understood and agreed that the
9605 rights, licenses and privileges herein granted are and shall be personal to Licensee, and none of said rights, licenses and privileges, nor any right herein or thereunder, shall be sold, assigned, or transferred without the written consent of Gypsum Company first obtained, nor shall Licensee permit the same, or any of them, to be transferred by operation of law; provided, however, that such rights, licenses, and privileges may be assigned by Licensee to any company acquiring all of the business and assets of said Licensee, on condition that Licensee shall first obtain an agreement in writing from any such assignee, in which such agreement such assignee agrees to assume all of the obligations of Licensee under this agreement and agrees to be bound by all of the terms and conditions hereof, and shall deliver such agreement to Gypsum Company.

VIII

In the event Gypsum Company shall, subsequent to the effective date hereof, grant to any other person, firm or corporation, any license under said Roos Patent or under said patents or applications for patent set forth in said Schedule A, for the manufacture, use, or sale of plaster board having a metallized surface, and embodying the claims or inventions set forth and claimed in said patents or said applications for patent, upon terms more favorable than those granted hereunder to Licensee, then Gypsum Company will grant to Licensee a license upon the same terms, or will extend to Licensee the same right granted to such other licensee.

IX

Licensee agrees to keep true and accurate books of account, showing the total amount of plaster board having
a metallized surface manufactured and/or sold by
9606 Licensee under the rights, licenses, and privileges herein granted, and the prices at which the same have been sold. Such books and records shall at all times during business hours be open to the inspection of Gypsum Com-

pany shall have the right to make copies of any of such records and make memoranda therefrom, provided that if at the time of such examination Licensee shall so request, such examination shall be made by a certified public accountant satisfactory to Gypsum Company, in which event the expense of such examination by the said certified public accountant shall be borne by Licensee.

X

Licensee agrees that on or before the fifteenth day of each calendar month it will furnish to Gypsum Company a written report, under the hand and verification of some officer or other duly authorized agent of Licensee, showing the total amount of plaster board having a metallized surface sold by Licensee during the preceding calendar month and which was manufactured by Licensee under the rights, licenses and privileges herein granted, and also showing whether such plaster board had one or two metallized surfaces, together with the prices at which the same shall have been sold, and at the time of furnishing such report, Licensee will pay to Gypsum Company the full royalty as herein provided for such plaster board having a metallized surface so sold by Licensee during such preceding calendar month. Such reports shall be furnished to Gypsum Company at its principal office, at Chicago, Illinois.

XI

Licensee expressly covenants and agrees that all sales by Licensee hereunder of plaster board having a metallized surface shall be bona fide sales thereof, and Licensee
9607 further covenants and agrees that no such products shall be placed on consignment. For the purposes of this agreement, a sale shall be considered to have been made not later than the date on which the goods are shipped.

XII

Licensee agrees that all plaster board having a metallized surface sold by it hereunder shall be numbered with the respective numbers of any appropriate patents under which the rights, licenses and privileges herein granted are granted, and covering the manufacture, sale, or use thereof. Gypsum Company shall have the right from time to time to specify the substance of the notice with which said products shall be so marked.

XIII

As one of the considerations for the indivisible and non-exclusive rights, licenses and privileges herein and hereby granted to Licensee, Licensee agrees that it will not at any time during the life of this agreement, or during the existence of said rights, licenses and privileges, directly or indirectly, by itself or through or together with another or others, contest the validity of said letters patent, or of said patent rights, or of any letters patent hereafter issued upon said applications so set forth in said Schedule A, or the right or title of Gypsum Company therein or thereto as herein or as in said Schedule A set forth, but in the event that any of said patents under which Licensee is licensed hereunder is held invalid or of limited construction by a court of competent jurisdiction from whose decision no appeal is or can be taken, then the Licensee shall have the right to make, use or vend the structure so held to be outside of the scope of said patent rights, free and clear of the terms of this agreement.

9608 Licensee agrees to give prompt notice of any suit or action which shall be brought against it in consequence of practicing the inventions set forth in said patents and said patent rights, and thereupon, if Gypsum Company shall desire to conduct the defense of such suit or action, it shall have the right to do so, but Licensee shall have the right, in such event, to be represented in such suit or action, at its own expense, by counsel of its own selection. Gypsum Company shall not, by undertaking to conduct the defense of any such suit or action, be under any obligation to indemnify the Licensee against any judgment, order or decrees or other result therein.

XIV

(a) In the event Licensee shall fail to make any report or shall fail to pay the royalty herein provided to be paid, or in the event that Licensee shall sell any of the materials covered by the price restriction provisions of Paragraph IV hereof, at a price or prices lower than the specified price or prices established and fixed by Gypsum Company as herein provided, Gypsum Company shall have the right to cancel all of the rights, licenses and privileges herein granted to Licensee, provided, however, that Licensee shall not be relieved thereby from any liability accrued at the time of such cancellation. In the event of any such breach,

Gypsum Company shall give written notice to Licensee of the default or defaults claimed by Gypsum Company to have occurred, and of the desire of Gypsum Company to cancel the rights, licenses and privileges of Licensee hereunder; and if Licensee shall not make good the default or defaults complained of within a period of thirty (30) days from the giving of such notice, then all of the rights, licenses and privileges of Licensee hereunder shall forthwith cease and terminate without further action on the part
9609 of Gypsum Company, provided, however, that if, upon the giving of any such notice, Licensee shall deny that the defaults, or any of them, complained of have occurred, then the question as to whether the default or defaults, the occurrence of which is so denied by Licensee, have in fact occurred, shall be referred to arbitration under Paragraph XV hereof.

(b) In the event that such arbiters find that such default or defaults have occurred, then Licensee shall promptly cure the same, and in any event shall cure the same within thirty (30) days from the date of the finding of such arbiters; and in the event such default or defaults shall not be so cured within the time limited, then the rights, licenses and privileges herein granted to Licensee shall forthwith cease and determine without further action on the part of Gypsum Company; the termination of said rights, licenses and privileges following the finding of the arbiters as aforesaid shall not release Licensee from any liability then existing.

(c) In the event (1) that Licensee shall be adjudicated a bankrupt, or (2) a receiver shall be appointed for Licensee, whose appointment shall not be vacated within sixty (60) days thereafter, then the rights, licenses and privileges herein granted to Licensee shall forthwith cease and determine, without further action on the part of Gypsum Company, provided that such termination shall not relieve Licensee of any and all liability then existing.

(d) The waiver by Gypsum Company of any breach on the part of Licensee shall not be interpreted as constituting a waiver of any further or other breach or breaches.

(e) In the event any default shall have occurred as specified in sub-paragraph (a) of this Paragraph XIV, Gypsum Company may give notice of such default without stating

its desire to terminate the rights, licenses and privi-
9610 leges herein granted to Licensee, and in the event such defaults shall not be cured by Licensee within the times mentioned in said sub-paragraph (a), Gypsum Company shall have the right, without terminating the said rights, licenses and privileges herein granted to Licensee, to maintain any appropriate action hereunder, at law or in equity, for the collection of license fees or royalties, or for damages, or for any other remedy as may be appropriate. The provisions mentioned in said sub-paragraph (a) with respect to arbitrating the fact as to whether any default or defaults complained of has or have in fact occurred, shall be applicable in all respect in the event notice of default is given without any statement by Gypsum of its desire to terminate the rights, licenses and privileges herein granted to Licensee, excepting that if the arbiters shall find that any of said defaults complained of shall have occurred, then Gypsum Company shall have the same right, without a termination of said rights, licenses and privileges so granted to Licensee, to maintain its appropriate action hereunder.

XV

Any question subject to arbitration under any provision of this contract shall be arbitrated in accordance with the rules then obtaining of the American Arbitration Association. The finding or findings of the arbiters with respect to the occurrence or non-occurrence of any claimed default, shall be final and conclusive. In the event the finding or findings of the arbiters shall be with respect to any default or defaults, or claimed default or defaults, in the payment of royalties or other sums of money herein required to be paid by the Licensee to Gypsum Company, and the arbiters shall find that such default or defaults shall have occurred, the arbiters shall in their finding fix and determine the amount of royalties or other sums of money due from Licensee to Gypsum Company, whereupon Licensee will promptly pay the
9611 same to Gypsum Company, and in any event will pay the same within the times hereinbefore mentioned in Paragraph XIV hereof, for the curing of defaults, provided that Gypsum Company shall have the right (but without being limited to such remedy) to have a summary judgment entered in its favor against Licensee for the amount so found to be due by the arbiters in any court of competent jurisdiction.

XVI

Any notice to be given under the terms hereof may be served by either party by mailing such notice to the other party hereto, by registered mail, postage prepaid, addressed to such party at its last known principal office, and the deposit of any such notice in the United States mails, registered, postage prepaid, and so addressed, shall constitute service of notice hereunder. Any telegraphic notice given under Paragraph IV hereof shall be confirmed in writing. Either party may change, from time to time, the address to which all notices shall be mailed, provided that in the absence of any different address, the respective addresses herein first above stated shall be the addresses to which such notices shall be mailed.

XVII

Except as herein otherwise expressly provided, this agreement shall remain in force for the full term of each patent under which the respective rights, licenses and privileges are hereby granted, and shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns, provided, however, that nothing in this Paragraph XVII contained shall be construed to permit any assignment hereof or of any of the rights, licenses, and privileges herein granted, except as herein otherwise specifically provided. Nothing herein contained shall
9612 be construed as extending any license for the manufacture and/or use and/or sale of plaster board not having a metallized surface heretofore or hereafter granted under any other agreement between the parties hereto.

In the event that the exclusive right and license of the Gypsum Company, as set forth in said Schedule A hereto, shall for any reason whatsoever (whether on account of the default of the Gypsum Company or otherwise) terminate, and such termination shall have the effect of terminating or shall result in the termination of any of the rights, licenses and privileges herein granted to the Licensee, then this agreement shall immediately terminate, without further act on the part of either of the parties hereto, provided that Licensee shall not be relieved thereby from any liability then existing, and provided further that Gypsum Company shall not be liable in any way to Licensee on account of such termination. Gypsum Com-

pany agrees that if its said exclusive right and license shall so be terminated, it will promptly notify Licensee of such termination.

XVIII

Anything hereinabove contained to the contrary notwithstanding, this agreement and the rights, licenses and privileges herein granted to the Licensee may be cancelled and terminated, at any time, by either party hereto, by at least ninety (90) days' prior notice to the other party of the election of the party serving the notice to exercise such right of cancellation and of the date on which such cancellation shall be effective, but such cancellation shall not relieve either party from any liability accrued or due at the date of such cancellation; Provided, However, that if Gypsum Company shall exercise the right to cancel this agreement as in this paragraph provided, then within ninety (90) days of its said notice it will submit
9613 to Licensee a new contract embodying a proposal for a non-exclusive license under said patents for the life of said patents, for acceptance by Licensee within ten (10) days from the date of such submittal.

In witness whereof, the parties hereto have caused these presents to be signed by their respective Presidents, attested by their respective Secretaries, and their corporate seals to be hereunto affixed, in duplicate, the day and year first above written.

UNITED STATES GYPSUM COMPANY,
By C. F. HENNING,
Its Vice President.

ATTEST:
T. R. PARRISH,
Asst. Secretary.

NATIONAL GYPSUM COMPANY.
By M. H. LAKE,
Its President.

ATTEST:
F. E. DAVIS,
Secretary.

9614 SCHEDULE A

The Gypsum Company has the exclusive right and license to make, use and sell building structures or elements for building structures where insulation is obtained by the use of plaster board having a metallized surface under the following patents and applications for patents known as the Alfol patents.

PATENTS

Inventor	*Patent No.*	*Issue Date*
E. Schmidt, et al	1,757,479	May 6, 1930
E. Schmidt	1,890,418	Dec. 6, 1932
Eduard Dyckerhoff	1,934,174	Nov. 7, 1933

APPLICATIONS

Inventor	*Ser. No.*	*Patent*	*Filing Date*
Schmidt, et al	105,753		April 30, 1926
Eduard Dyckerhoff	442,219		April 7, 1930
Ernst Schmidt	663,572	2,015,817	March 30, 1933

together with any divisions, continuations, renewals or reissues thereof, but it is understood that the term "building structures" is limited to the walls, floors, roofs and ceilings of buildings and does not include pipes or ducts or other heating apparatus installed in the building or refrigerating or cooling apparatus or structures whether built into the building or not, and it is further understood that Gypsum Company has no right or license under said patents or applications to use metal foil for insulators except where such foil is applied to a non-metallic member as a facing therefor.

9615 *Government's Exhibit No. 20*

PLASTER BOARD AGREEMENT

This Agreement, made and entered into this 2nd day of November A. D. 1934, by and between United States Gypsum Company, a corporation organized and existing under and by virtue of the laws of the State of Illinois and having its principal place of business at 300 West Adams Street, Chicago, Illinois, hereinafter referred to as the "Gypsum Company," and Certain-teed Products Corporation, a corporation organized and existing under and by virtue of the laws of the State of Maryland and having its principal place of business at 100 East 42d St., New York, N. Y., hereinafter referred to as "Licensee," witnesseth:

Whereas, Gypsum Company is the owner of United States Letters Patent to Roos No. 1,914,345, relating to wall construction, and is also the owner of certain patent rights set forth in Schedule A hereunto annexed, relating to building structures or elements for said structures; and

Whereas, Licensee desires an indivisible and non-exclusive license from Gypsum Company, under the terms and conditions hereinafter set forth and as hereinafter specified, to manufacture, use and sell plaster board under said Roos Patent No. 1,914,345 and under said patent rights set forth in said Schedule A; and

Whereas, Gypsum Company is willing to grant such license, under the terms and conditions hereinafter set forth and as hereinafter specified,

Now, therefore, in consideration of the premises, the sum of One Dollar ($1.00) in hand paid, receipt of
9616 which is hereby acknowledged by Gypsum Company, and the mutual covenants herein contained, it is hereby agreed as follows:

I

Gypsum Company hereby represents and warrants that it has the right to grant the license hereby granted.

II

The term "plaster board," as herein used, is intended to included material commonly known as plasterboard and also materials known as plaster wall board, plaster lath, and plaster sheathing boards.

III

Gypsum Company has agreed to and does hereby give and grant unto Licensee the indivisible, non-exclusive right, license and privilege to make, use and sell plaster board having a metallized surface embodying the inventions disclosed and claimed in said Roos Patent and in the patents or patent applications set forth in Schedule A, or in any of them; Provided, However, that the right, license and privilege herein and hereby granted is specifically limited to the plaster board and building structures incorporating the same, as set forth in said Schedule A, and does not extend to any other product or structure.

IV

(a) It is expressly understood and agreed that the indivisible and non-exclusive rights, licenses and privileges aforesaid are granted, and they are hereby accepted, upon the express condition that Gypsum Company shall have, and it hereby reserves, the right to determine and fix at any time, and to change from time to time, during the existence of said patents and so long as said rights, licenses and privileges granted hereunder shall con-
9617 tinue, the minimum price or prices at which Licensee shall or may sell plaster board having a metallized surface which is covered by said Roos Patent or any of the said patents set forth in Schedule A, or which shall embody the inventions or improvements set forth and claimed in any patents issued upon any of the applications for patent set forth in said Schedule A, provided that the right hereinabove reserved to determine and fix the minimum price or prices of any such plaster board shall not be exercised with respect to any such plaster board embodying only the inventions or improvements, or one or more of them, set forth and claimed in any of the applications for patent set forth in said Schedule A, prior to the date when the patent or patents shall have been granted or issued upon such application or applications, respectively.

(b) In the event Gypsum Company shall exercise the right thus reserved, namely, to determine and fix at any time, and to change from time to time, such minimum price or prices, it shall notify Licensee of its election to exercise such right, and shall include in such notice, or accompany such notice by, a statement of such minimum price or prices at which Licensee shall or may sell said plaster board having a metallized surface, manufactured by Licensee, and thereafter shall give Licensee written or telegraphic notice of any change in such price or prices; and Licensee expressly covenants and agrees that it will not, so long as this agreement shall continue in force and effect, after receipt of such notice given in accordance with the terms and conditions hereof, directly or indirectly, sell or offer for sale any plaster board having a metallized surface manufactured by said Licensee embodying the inventions and improvements set forth in said Roos Patent or in any of said patents set forth in said Schedule A, or

9618 embodying the inventions or improvements set forth and claimed in any patents issued upon any applications for patent set forth in said Schedule A, at a price or prices less than that stated by Gypsum Company in said notice or in any such written or telegraphic notice of change in said price or prices. The said minimum price or prices at which Licensee shall or may sell said patented products as determined and fixed by Gypsum Company may be the same for all classes of trade, provided that Gypsum Company may, at any time and from time to time, determine and fix different prices for different classes of trade. It is further understood and agreed that any such minimum price or prices so determined and fixed by Gypsum Company may be made with respect to each trade market or place where said plaster board having a metallized surface may be sold, and may also be made with respect to different quantities purchased, such as carloads, less than carloads and truck loads, and that such minimum price or prices may differ in amount in each different market or place according to market conditions or quantities, all as may be determined by Gypsum Company.

(c) The said minimum price or prices so determined and fixed from time to time by Gypsum Company shall not be more than the respective price or prices at which Gypsum Company itself determines to sell such products embodying the said inventions and improvements hereinbefore mentioned, to its own like trade in the same market.

(d) It is understood and agreed that all orders, contracts, or commitments for the future sale of said plaster board having a metallized surface and embodying the inventions and improvements hereinbefore mentioned shall be made subject to establishment of, and/or change in, such minimum price at which said materials or products may be sold, and that all shipments thereof shall be made
9619 at no less than the minimum price or prices contained in any notice of establishment of, and/or change in, price or prices received before shipment; provided, however, that on all orders taken for immediate shipment at not less than the minimum price, if any, then in effect, shipment thereof may be made at the price at which taken within five days of the date of such order; provided, further, that written contracts may be made at not less than the minimum price, if any, then in effect, to furnish such patented material for any specific work or job

then contemplated or under construction; Provided, Further, that where contracts for specific work or jobs have been let to general contractors before notice of establishment of, and/or change in, price, then Licensee, if it has made a commitment for any such specific work or job prior to such notice, may at any time within thirty (30) days after such notice make a written contract to furnish the material for such specific work or job, at the price at which it was committed, but not less than the minimum price if any, in effect at the time of such commitment. Within ten (10) days after each notice of minimum price or change thereof, Licensee will furnish to Gypsum Company a written statement of all specific work or jobs, contracts and commitments which Licensee had at the time such notice was given, showing the date of the contract or commitment, name of purchaser, location and description of specific work or job, quantity of material, and price at which the same was sold or commitment made, and shall immediately notify Gypsum Company of the making of any such contract for such specific work or job within the thirty-day term hereinbefore mentioned, and of the completion or abandonment of all specific work, jobs, contracts and commitments theretofore had by Licensee. It is understood and agreed that no such contract or commitment shall be recognized as valid hereunder, unless the
9620 contract or commitment shall have been made in good faith before notice of making a price or change thereof, and unless such contract or commitment shall have been for some specific work or job then contemplated or under construction in which such patented material specified in the said contract or commitment is to be furnished or installed.

V.

As consideration for the rights, licenses, and privileges herein granted to Licensee, Licensee agrees to pay royalty to Gypsum Company for all plaster board having a metallized surface manufactured and sold by Licensee and which are covered by claims of said Roos patent or patents set forth in the said Schedule A, or patents which may be issued under any of the applications set forth under said Schedule A, or which are to be used in making structures covered by said patent rights, at the rate of forty cents (40¢) per thousand square feet surface area where only one face is metallized, and at the rate of fifty cents (50¢) per thousand square feet where both faces are metallized,

on any product covered by any of the patent rights aforesaid.

VI.

It is expressly understood that Licensee shall have no right, without the written consent of Gypsum Company first obtained, to manufacture any of said patented material for any other manufacturer of plaster board, whether or not licensed under said patents, or to sell such patented material to any other such manufacturer, or to deliver any of the same to any person, firm or corporation whatsoever on consignment.

VII.

It is expressly understood and agreed that the
9621 rights, licenses and privileges herein granted are and shall be personal to Licensee, and none of said rights, licenses and privileges, nor any right herein or thereunder, shall be sold, assigned, or transferred without the written consent of Gypsum Company first obtained, nor shall Licensee permit the same, or any of them, to be transferred by operation of law; and Provided, however, that such rights, licenses, and privileges may be assigned by Licensee to any company acquiring all of the business and assets of said Licensee, on condition that Licensee shall first obtain an agreement in writing from any such assignee, in which such agreement such assignee agrees to assume all of the obligations of Licensee under this agreement and agrees to be bound by all of the terms and conditions hereof, and shall deliver such agreement to Gypsum Company.

VIII.

In the event Gypsum Company shall, subsequent to the effective date hereof, grant to any other person, firm or corporation, any license under said Roos Patent or under said patents or applications for patent set forth in said Schedule A, for the manufacture, use, or sale of plaster board having a metallized surface, and embodying the claims or inventions set forth and claimed in said patents or said applications for patent, upon terms more favorable than those granted hereunder to Licensee, then Gypsum Company will grant to Licensee a license upon the same terms, or will extend to Licensee the same right granted to such other licensee.

IX.

Licensee agrees to keep true and accurate books of accounts, showing the total amount of plaster board having a metallized surface manufactured and/or sold by Licensee under the rights, licenses and privileges herein granted, and the prices at which the same have been sold. Such books and records shall at all times during business hours be open to the inspection of Gypsum Company or its duly authorized representatives. Gypsum Company shall have the right to make copies of any of such records and make memoranda therefrom, provided that if at the time of such examination Licensee shall so request, such examination shall be made by a certified public accountant satisfactory to Gypsum Company, in which event the expense of such examination by the said certified public accountant shall be borne by Licensee.

9622

X.

Licensee agrees that on or before the fifteenth day of each calendar month it will furnish to Gypsum Company a written report, under the hand and verification of some officer or other duly authorized agent of Licensee, showing the total amount of plaster board having a metallized surface sold by Licensee during the preceding calendar month and which was manufactured by Licensee under the rights, licenses and privileges herein granted, and also showing whether such plaster board had one or two metallized surfaces, together with the prices at which the same shall have been sold, and at the time of furnishing such report, Licensee will pay to Gypsum Company the full royalty as herein provided for such plaster board having a metallized surface so sold by Licensee during such preceding calendar month. Such reports shall be furnished to Gypsum Company at its principal office, at Chicago, Illinois.

XI.

Licensee expressly covenants and agrees that all sales by Licensee hereunder of plaster board having a metallized surface shall be bona fide sales thereof, and Licensee further expressly covenants and agrees that no such products shall be placed on consignment. For the purposes of this agreement, a sale shall be considered to have been made not later than the date on which the goods are shipped.

9623

XII.

Licensee agrees that all plaster board having a metallized surface sold by it hereunder shall be numbered with the respective numbers of any appropriate patents under which the rights, licenses and privileges herein granted are granted, and covering the manufacture, sale, or use thereof. Gypsum Company shall have the right from time to time to specify the substance of the notice with which said products shall be so marked.

XIII.

As one of the considerations for the indivisible and non-exclusive rights, licenses and privileges herein and hereby granted to Licensee, Licensee agrees that it will not at any time during the life of this agreement, or during the existence of said rights, licenses and privileges, directly or indirectly, by itself or through or together with another or others, contest the validity of said letters patent, or of said patent rights, or of any letters patent hereafter issued upon said applications so set forth in said Schedule A, or the right or title of Gypsum Company therein or thereto as herein or as in said Schedule A set forth; but in the event that any of said patents under which Licensee is licensed hereunder is held invalid or of limited construction by a court of competent jurisdiction from whose decision no appeal is or can be taken, then the Licensee shall have the right to make, use or vend the structure so held to be outside of the scope of said patent rights, free and clear of the terms of this agreement.

9624 Licensee agrees to give prompt notice of any suit or action which shall be brought against it in consequence of practicing the inventions set forth in said patents and said patent rights, and thereupon, if Gypsum Company shall desire to conduct the defense of such suit or action, it shall have the right to do so, but Licensee shall have the right, in such event, to be represented in such suit or action, at its own expense, by counsel of its own selection. Gypsum Company shall not, by undertaking to conduct the defense of any such suit or action, be under any obligation to indemnify the Licensee against any judgment, order or decreee or other result therein.

XIV.

(a) In the event Licensee shall fail to make any report or shall fail to pay the royalty herein provided to be paid,

or in the event that Licensee shall sell any of the materials covered by the price restriction provisions of Paragraph IV hereof, at a price or prices lower than the specified price or prices established and fixed by Gypsum Company as herein provided, Gypsum Company shall have the right to cancel all of the rights, licenses and privileges herein granted to Licensee; provided, however, that Licensee shall not be relieved thereby from any liability accrued at the time of such cancellation. In the event of any such breach, Gypsum Company shall give written notice to Licensee of the default or defaults claimed by Gypsum Company to have occurred, and of the desire of Gypsum Company to cancel the rights, licenses and privileges of Licensee hereunder; and if Licensee shall not make good the default or defaults complained of within a period of thirty (30) days from the giving of such notice, then all of the rights, licenses and privileges of Licensee hereunder shall forthwith cease and terminate without further action on the part of Gypsum Company; provided, however, that
9625 if, upon the giving of any such notice, Licensee shall deny that the defaults, or any of them, complained of have occurred, then the question as to whether the default or defaults, the occurrence of which is so denied by Licensee, have in fact occurred, shall be referred to arbitration under Paragraph XV hereof.

(b) In the event that such arbiters find that such default or defaults have occurred, then Licensee shall promptly cure the same, and in any event shall cure the same within thirty (30) days from the date of the finding of such arbiters; and in the event such default or defaults shall not be so cured within the time limited, then the rights, licenses and privileges herein granted to Licensee shall forthwith cease and determine without further action on the part of Gypsum Company; the termination of said rights, licenses and privileges following the finding of the arbiters as aforesaid shall not release Licensee from any liability then existing.

(c) In the event (1) that Licensee shall be adjudicated a bankrupt, or (2) a receiver shall be appointed for Licensee, whose appointment shall not be vacated within sixty (60) days thereafter, then the rights, licenses and privileges herein granted to Licensee shall forthwith cease and determine, without further action on the part of Gypsum Company, provided that such termination shall not relieve Licensee of any and all liability then existing.

(d) The waiver by Gypsum Company of any breach on the part of Licensee shall not be interpreted as constituting a waiver of any further or other breach or breaches.

(e) In the event any default shall have occurred as specified in sub-paragraph (a) of this Paragraph XIV, Gypsum Company may give notice of such default without stating its desire to terminate the rights, licenses and privi-
leges herein granted to Licensee, and in the event
9626 such defaults shall not be cured by Licensee within the times mentioned in said sub-paragraph (a), Gypsum Company shall have the right, without terminating the said rights, licenses and privileges herein granted to Licensee, to maintain any appropriate action hereunder, at law or in equity, for the collection of license fees or royalties, or for damages, or for any other remedy as may be appropriate. The provisions mentioned in said sub-paragraph (a) with respect to arbitrating the fact as to whether any default or defaults complained of has or have in fact occurred, shall be applicable in all respects in the event notice of default is given without any statement by Gypsum Company of its desire to terminate the rights, licenses and privileges herein granted to Licensee, excepting that if the arbiters shall find that any of said defaults complained of shall have occurred, then Gypsum Company shall have the same right, without a termination of said rights, licenses and privileges so granted to Licensee, to maintain its appropriate action hereunder.

XV.

Any question subject to arbitration under any provision of this contract shall be arbitrated in accordance with the rules then obtaining of the American Arbitration Association. The finding or findings of the arbiters with respect to the occurrence or non-occurrence of any claimed default, shall be final and conclusive. In the event the finding or findings of the arbiters shall be with respect to any default or defaults, or claimed default or defaults, in the payment of royalties or other sums of money herein required to be by the Licensee to Gypsum Company and the arbiters shall find that such default or defaults shall have occurred, the arbiters shall in their finding fix and determine the amount of royalties or other sums of money due from Li-
cense to Gypsum Company, whereupon Licensee will
9627 promptly pay the same to Gypsum Company, and in any event will pay the same within the times hereinbefore mentioned in Paragraph XIV hereof for the curing of defaults, provided that Gypsum Company shall have

the right (but without being limited to such remedy) to have a summary judgment entered in its favor against Licensee for the amount so found to be due by the arbiters in any court of competent jurisdiction.

XVI.

Any notice to be given under the terms hereof may be served by either party by mailing such notice to the other party hereto, by registered mail, postage prepaid, addressed to such party at its last known principal office, and the deposit of any such notice in the United States mails, registered, postage prepaid, and so addressed, shall constitute service of notice hereunder. Any telegraphic notice given under Paragraph IV hereof shall be confirmed in writing. Either party may change, from time to time, the address to which all notices shall be mailed, provided that in the absence of any different address, the respective addresses herein first above stated shall be the addresses to which such notices shall be mailed.

XVII.

Except as herein otherwise expressly provided, this agreement shall remain in force for the full term of each patent under which the respective rights, licenses and privileges are hereby granted, and shall be binding upon, and inure to the benefit of the parties hereto, their successors and assigns, provided, however, that nothing in this Paragraph XVII contained shall be construed to permit any assignment hereof or of any of the rights, licenses, and privileges herein granted, except as herein otherwise specifically provided. Nothing herein contained shall be
9628 construed as extending any license for the manufacture and/or use and/or sale of plaster board not having a metallized surface heretofore or hereafter granted under any other agreement between the parties hereto.

In the event that the exclusive right and license of the Gypsum Company, as set forth in said Schedule A hereto, shall for any reason whatsoever (whether on account of the default of the Gypsum Company or otherwise) terminate, and such termination shall have the effect of terminating or shall result in the termination of any of the rights, licenses and privileges herein granted to the Licensee, then this agreement shall immediately terminate, without further act on the part of either of the parties hereto, provided that Licensee shall not be relieved thereby from any liability then existing, and provided further that Gypsum

Company shall not be liable in any way to Licensee on account of such termination. Gypsum Company agrees that if its said exclusive right and license shall so be terminated, it will promptly notify Licensee of such termination.

XVIII.

Anything hereinabove contained to the contrary notwithstanding, this agreement and the rights, licenses and privileges herein granted to the Licensee may be cancelled and terminated, at any time, by either party hereto, by at least ninety (90) days' prior written notice to the other party of the election of the party serving the notice to exercise such right of cancellation and of the date on which such cancellation shall be effective, but such cancellation shall not relieve either party from any liability accrued or due at the date of such cancellation; Provided, However, that if Gypsum Company shall exercise the right to cancel this agreement as in this paragraph provided, then within ninety (90) days of its said notice it will submit to Licensee
9629 a new contract embodying a proposal for a non-exclusive license under said patents for the life of said patents, for acceptance by Licensee within ten (10) days from the date of such submittal.

In witness whereof, the parties hereto have caused these presents to be signed by their respective Presidents, attested by their respective Secretaries, and their corporate seals to be hereunto affixed, in duplicate, the day and year first above written.

UNITED STATES GYPSUM COMPANY.

By C. F. HENNING,
Its Vice President.

ATTEST:
C. H. SHAVER,
Secretary.

CERTAIN-TEED PRODUCTS CORPORATION,

By ANDENREID WHITTEMORE,
Vice President.

ATTEST:
ROBERT M. NELSON,
Secretary.

9630 SCHEDULE A

The Gypsum Company has the exclusive right and license to make, use and sell building structures or elements for building structures where insulation is obtained

by the use of plaster board having a metallized surface uder the following patents and applications for patents known as the Alfol patents.

PATENTS

Inventor	*Patent No.*	*Issue Date*
E. Schmidt, et al	1,757,479	May 5, 1930
E. Schmidt	1,890,418	Dec. 6, 1932
Eduard Dyckerhoff	1,934,174	Nov. 7, 1933
Schmidt	2,015,817	Oct. 1, 1935

APPLICATIONS

Inventor	*Ser. No.*	*Filing Date*
Schmidt, et al	105,753	April 30, 1926
Eduard Dyckerhoff	442,219	April 7, 1930
Ernst Schmidt	663,572	March 30, 1933

together with any divisions, continuations, renewals or reissues thereof, but it is understood that the term "building structures" is limited to the walls, floors, roofs and ceilings of buildings and does not include pipes or ducts or other heating apparatus installed in the building or refrigerating or cooling apparatus or structures whether built into the building or not, and it is further understood that Gypsum Company has no right or license under said patents or applications to use metal foil for insulators except where such foil is applied to a non-metallic member as a facing therefor.

9631 *Government's Exhibit No. 21*

PLASTER BOARD AGREEMENT

This agreement, made and entered into this 14th day of August A. D. 1935, by and between United States Gypsum Company, a corporation organized and existing under and by virtue of the laws of the State of Illinois and having its principal place of business at 300 West Adams Street, Chicago, Illinois, hereinafter referred to as the "Gypsum Company," and Ebsary Gypsum Company, a corporation organized and existing under and by virtue of the laws of the State of New York and having its principal place of business at 52 Vanderbilt Avenue, New York, New York, hereinafter referred to as "Licensee," witnesseth:

Whereas, Gypsum Company is the owner of United States Letters Patent to Roos No. 1,914,345, relating to wall construction, and is also the owner of certain patent rights set forth in Schedule A hereunto annexed, relating to building structures or elements for said structures; and

Whereas Licensee desires an indivisible and non-exclusive license from Gypsum Company, under the terms and conditions hereinafter set forth and as hereinafter specified, to manufacture, use and sell plaster board under said Roos Patent No. 1,914,345 and under said patent rights set forth in said Schedule A; and

Whereas, Gypsum Company is willing to grant such license, under the terms and conditions hereinafter set forth and as hereinafter specified,

Now, therefore, in consideration of the premises, the sum of One Dollar ($1.00) in hand paid, receipt of
9632 which is hereby acknowledged by Gypsum Company, and the mutual covenants herein contained, it is hereby agreed as follows:

I

Gypsum Company hereby represents and warrants that it has the right to grant the license hereby granted.

II

The term "plaster board," as herein used, is intended to include material commonly known as plasterboard and also materials known as plaster wall board, plaster lath, and plaster sheathing boards.

III

Gypsum Company has agreed to and does hereby give and grant unto Licensee the indivisible, non-exclusive right, license and privilege to make, use and sell plaster board having a metallized surface embodying the inventions disclosed and claimed in said Roos Patent and in the patents or patent applications set forth in Schedule A, or in any of them; Provided, However, that the right, license and privilege herein and hereby granted is specifically limited to the plaster board and building structures incorporating the same as set forth in said Schedule A, and does not extend to any other product or structure.

IV

(a) It is expressly understood and agreed that the indivisible and non-exclusive rights, licenses and privileges aforesaid are granted, and they are hereby accepted, upon the express condition that Gypsum Company shall have, and it hereby reserves, the right to determine and fix at any time, and to change from time to time, during the

existence of said patents and so long as said rights, licenses and privileges granted hereunder shall
9633 continue, the minimum price or prices at which Licensee shall or may sell plaster board having a metallized surface which is covered by said Roos Patent or any of the said patents set forth in Schedule A, or which shall embody the inventions or improvements set forth and claimed in any patents issued upon any of the applications for patent set forth in said Schedule A, provided that the right hereinabove reserved to determine and fix the minimum price or prices of any such plaster board shall not be exercised with respect to any such plaster board embodying only the inventions or improvements, or one or more of them, set forth and claimed in any of the applications for patent set forth in said Schedule A, prior to the date when the patent or patents shall have been granted or issued upon such application or applications, respectively.

(b) In the event Gypsum Company shall exercise the right thus reserved, namely, to determine and fix at any time, and to change from time to time, such minimum price or prices, it shall notify Licensee of its election to exercise such right, and shall include in such notice, or accompany such notice by, a statement of such minimum price or prices at which Licensee shall or may sell said plaster board having a metallized surface, manufactured by Licensee, and thereafter shall give Licensee written or telegraphic notice of any change in such price or prices; and Licensee expressly covenants and agrees that it will not, so long as this agreement shall continue in force and effect, after receipt of such notice given in accordance with the terms and conditions hereof, directly or indirectly, sell or offer for sale any plaster board having a metallized surface manufactured by said Licensee embodying the inventions and improvements set forth in said Roos Patent or in any of said patents set forth in said Schedule
9634 A, or embodying the inventions or improvements set forth and claimed in any patents issued upon any applications for patent set forth in said Schedule A, at a price or prices less than that stated by Gypsum Company in said notice or in any such written or telegraphic notice of change in said price or prices. The said minimum price or prices at which Licensee shall or may sell said patented products as determined and fixed by Gypsum Company may be the same for all classes of trade,

provided that Gypsum Company may, at any time and from time to time, determine and fix different prices for different classes of trade. It is further understood and agreed that any such minimum price or prices so determined and fixed by Gypsum Company may be made with respect to each trade market or place where said plaster board having a metallized surfaced may be sold, and may also be made with respect to different quantities purchased, such as carloads, less than carloads and truck loads, and that such minimum price or prices may differ in amount in each different market or place according to market conditions or quantities, all as may be determined by Gypsum Company.

(c) The said minimum price or prices so determined and fixed from time to time by Gypsum Company shall not be more than the respective price or prices at which Gypsum Company itself determines to sell such products embodying the said inventions and improvements hereinbefore mentioned, to its own like trade in the same market.

(d) It is understood and agreed that all orders, contracts, or commitments for the future sale of said plaster board having a metallized surface and embodying the inventions and improvements hereinbefore mentioned shall be made subject to establishment of, and/or change in, such minimum price at which said materials or products may be sold, and that all shipments thereof shall
9635 be made at no less than the minimum price or prices contained in any notice of establishment of, and/or change in, price or prices received before shipment; provided, however, that on all orders taken for immediate shipment at not less than the minimum price, if any, then in effect, shipment thereof may be made at the price at which taken within five days of the date of such order; provided, further, that written contracts may be made at not less than the minimum price, if any, then in effect, to furnish such patented material for any specific work or job then contemplated or under construction; Provided, Further, that where contracts for specific work or jobs have been let to general contractors before notice of establishment of, and/or change in, price, then Licensee, if it has made a commitment for any such specific work or job prior to such notice, may at any time within thirty (30) days after such notice make a written contract to furnish the material for such specific work or job, at the

price at which it was committed, but not less than the minimum price, if any, in effect at the time of such commitment. Within ten (10) days after each notice of minimum price or change thereof, Licensee will furnish to Gypsum Company a written statement of all specific work or jobs, contracts and commitments which Licensee had at the time such notice was given, showing the date of the contract or commitment, name of purchaser, location and description of specific work or job, quantity of material, and price at which the same was sold or commitment made, and shall immediately notify Gypsum Company of the making of any such contract for such specific work or job within the thirty-day term hereinbefore mentioned, and of the completion or abandonment of all specific work, jobs, contracts and commitments theretofore had by Licensee. It is understood and agreed that no such
9636 contract or commitment shall be recognized as valid hereunder, unless the contract or commitment shall have been made in good faith before notice of making a price or change thereof, and unless such contract or commitment shall have been for some specific work or job then contemplated or under construction in which such patented material specified in the said contract or commitment is to be furnished or installed.

V

As consideration for the rights, licenses, and privileges herein granted to Licensee, Licensee agrees to pay royalty to Gypsum Company for all plaster board having a metallized surface manufactured and sold by Licensee and which are covered by claims of said Roos patent or patents set forth in the said Schedule A, or patents which may be issued under any of the applications set forth under said Schedule A, or which are to be used in making structures covered by said patent rights, at the rate of forty cents (40¢) per thousand square feet surface area where only one face is metallized, and at the rate of fifty cents (50¢) per thousand square feet where both faces are metallized, on any product covered by any of the patent rights aforesaid.

VI

It is expressly understood that Licensee shall have no right, without the written consent of Gypsum Company

first obtained, to manufacture any of said patented material for any other manufacturer of plaster board, whether or not licensed under said patents, or to sell such patented material to any other such manufacturer, or to deliver any of the same to any person, firm or corporation whatsoever on consignment.

VII

It is expressly understood and agreed that the
9637 rights, licenses and privileges herein granted are and shall be personal to Licensee, and none of said rights, licenses and privileges, nor any right herein or thereunder, shall be sold, assigned, or transferred without the written consent of Gypsum Company first obtained, nor shall Licensee permit the same, or any of them, to be transferred by operation of law; Provided, however, that such rights, licenses, and privileges may be assigned by Licensee to any company acquiring all of the business and assets of said Licensee, on condition that Licensee shall first obtain an agreement in writing from any such assignee, in which such agreement such assignee agrees to assume all of the obligations of Licensee under this agreement and agrees to be bound by all of the terms and conditions hereof, and shall deliver such agreement to Gypsum Company.

VIII

In the event Gypsum Company shall, subsequent to the effective date hereof, grant to any other person, firm or corporation, any license under said Roos Patent or under said patents or applications for patent set forth in said Schedule A, for the manufacture, use, or sale of plaster board having a metallized surface, and embodying the claims or inventions set forth and claimed in said patents or said applications for patent, upon terms more favorable than those granted hereunder to Licensee, then Gypsum Company will grant to Licensee a license upon the same terms, or will extend to Licensee the same right granted to such other licensee.

IX

Licensee agrees to keep true and accurate books of account, showing the total amount of plaster board having
a metallized surface manufactured and/or sold by
9638 Licensee under the rights, licenses and privileges herein granted, and the prices at which the same

have been sold. Such books and records shall at all times during business hours be open to the inspection of Gypsum Company or its duly authorized representatives. Gypsum Company shall have the right to make copies of any of such records and make memoranda therefrom, provided that if at the time of such examination Licensee shall so request, such examination shall be made by a certified public accountant satisfactory to Gypsum Company, in which event the expense of such examination by the said certified public accountant shall be borne by Licensee.

X

Licensee agrees that on or before the fifteenth day of each calendar month it will furnish to Gypsum Company a written report, under the hand and verification of some officer or other duly authorized agent of Licensee, showing the total amount of plaster board having a metallized surface sold by Licensee during the preceding calendar month and which was manufactured by Licensee under the rights, licenses and privileges herein granted, and also showing whether such plaster board had one or two metallized surfaces, together with the prices at which the same shall have been sold, and at the time of furnishing such report, Licensee will pay to Gypsum Company the full royalty as herein provided for such plaster board having a metallized surface so sold by Licensee during such preceding calendar month. Such reports shall be furnished to Gypsum Company at its principal office, at Chicago, Illinois.

XI

Licensee expressly covenants and agrees that all sales by Licensee hereunder of plaster board having a metallized surface shall be bona fide sales thereof, and
9639 Licensee further expressly covenants and agrees that no such products shall be placed on consignment. For the purposes of this agreement, a sale shall be considered to have been made not later than the date on which the goods are shipped.

XII

Licensee agrees that all plaster board having a metallized surface sold by it hereunder shall be numbered with the respective numbers of any appropriate patents under which the rights, licenses and privileges herein granted

are granted, and covering the manufacture, sale, or use thereof. Gypsum Company shall have the right from time to time to specify the substance of the notice with which said products shall be so marked.

XIII

As one of the considerations for the indivisible and non-exclusive rights, licenses and privileges herein and hereby granted to Licensee, Licensee agrees that it will not at any time during the life of this agreement, or during the existence of said rights, licenses and privileges, directly or indirectly, by itself or through or together with another or others, contest the validity of said letters patent, or of said patent rights, or of any letters patent hereafter issued upon said applications so set forth in said Schedule A, or the right or title of Gypsum Company therein or thereto as herein or as in said Schedule A set forth, but in the event that any of said patents under which Licensee is licensed hereunder is held invalid or of limited construction by a court of competent jurisdiction from whose decision no appeal is or can be taken, then the Licensee shall have the right to make, use or vend the structure so held to be outside of the scope of said patent rights, free and clear of the terms of this agreement.

9640 Licensee agrees to give prompt notice of any suit or action which shall be brought against it in consequence of practicing the inventions set forth in said patents and said patent rights, and thereupon, if Gypsum Company shall desire to conduct the defense of such suit or action, it shall have the right to do so, but Licensee shall have the right, in such event, to be represented in such suit or action, at its own expense, by counsel of its own election. Gypsum Company shall not, by undertaking to conduct the defense of any such suit or action, be under any obligation to indemnify the Licensee against any judgment, order or decree or other result therein.

XIV

(a) In the event Licensee shall fail to make any report or shall fail to pay the royalty herein provided to be paid, or in the event that Licensee shall sell any of the materials covered by the price restriction provisions of Paragraph IV hereof, at a price or prices lower than the specified price or prices established and fixed by Gypsum Company as herein provided, Gypsum Company shall

have the right to cancel all of the rights, licenses and privileges herein granted to Licensee; provided, however, that Licensee shall not be relieved thereby from any liability accrued at the time of such cancellation. In the event of any such breach, Gypsum Company shall give written notice to Licensee of the default or defaults claimed by Gypsum Company to have occurred, and of the desire of Gypsum Company to cancel the rights, licenses and privileges of Licensee hereunder; and if Licensee shall not make good the default or defaults complained of within a period of thirty (30) days from the giving of such notice, then all of the rights, licenses and privileges of Licensee hereunder shall forthwith cease and terminate without further action on the part of Gypsum Com-
9641 pany; provided, however, that if, upon the giving of any such notice, Licensee shall deny that the defaults, or any of them, complained of have occurred, then the question as to whether the default or defaults, the occurrence of which is so denied by Licensee, have in fact occurred, shall be referred to arbitration under Paragraph XV hereof.

(b) In the event that such arbiters find that such default or defaults have occurred, then Licensee shall promptly cure the same, and in any event shall cure the same within thirty (30) days from the date of the finding of such arbiters; and in the event such default or defaults shall not be so cured within the time limited, then the rights, licenses and privileges herein granted to Licensee shall forthwith cease and determine without further action on the part of Gypsum Company; the termination of said rights, licenses and privileges following the finding of the arbiters as aforesaid shall not release Licensee from any liability then existing.

(c) In the event (1) that Licensee shall be adjudicated a bankrupt, or (2) a receiver shall be appointed for Licensee, whose appointment shall not be vacated within sixty (60) days thereafter, then the rights, licenses and privileges herein granted to Licensee shall forthwith cease and determine, without further action on the part of Gypsum Company, provided that such termination shall not relieve Licensee of any and all liability then existing.

(d) The waiver by Gypsum Company of any breach on the part of Licensee shall not be interpreted as constituting a waiver of any further or other breach or breaches.

(e) In the event any default shall have occurred as specified in sub-paragraph (a) of this Paragraph XIV, Gypsum Company may give notice of such default without stating its desire to terminate the rights, licenses
9642 and privileges herein granted to Licensee, and in the event such defaults shall not be cured by Licensee within the times mentioned in said sub-paragraph (a), Gypsum Company shall have the right, without terminating the said rights, licenses and privileges herein granted to Licensee, to maintain any appropriate action hereunder, at law or in equity, for the collection of license fees or royalties, or for damages or for any other remedy as may be appropriate. The provisions mentioned in said sub-paragraph (a) with respect to arbitrating the fact as to whether any default or defaults complained of has or have in fact occurred, shall be applicable in all respects in the event notice of default is given without any statement by Gypsum Company of its desire to terminate the rights, licenses and privileges herein granted to Licensee, excepting that if the arbiters shall find that any of said defaults complained of shall have occurred, then Gypsum Company shall have the same right, without a termination of said rights, licenses and privileges so granted to Licensee; to maintain its appropriate action hereunder.

XV

Any question subject to arbitration under any provision of this contract shall be arbitrated in accordance with the rules then obtaining of the American Arbitration Association. The finding or findings of the arbiters with respect to the occurrence or non-occurrence of any claimed default, shall be final and conclusive. In the event the finding or findings of the arbiters shall be with respect to any default or defaults, or claimed default or defaults, in the payment of royalties or other sums of money herein required to be paid by the Licensee to Gypsum Company and the arbiters shall find that such default or defaults shall have occurred, the arbiters shall in their finding fix and determine the amount of royalties or other sums of money due from License to Gypsum Company, whereupon
9643 Licensee will promptly pay the same to Gypsum Company, and in any event will pay the same within the times hereinbefore mentioned in Paragraph XIV hereof for the curing of defaults, provided that Gypsum Company

shall have the right (but without being limited to such remedy) to have a summary judgment entered in its favor against Licensee for the amount so found to be due by the arbiters in any court of competent jurisdiction.

XVI

Any notice to be given under the terms hereof may be served by either party by mailing such notice to the other party hereto, by registered mail, postage prepaid, addressed to such party at its last known principal office, and the deposit of any such notice in the United States mails, registered, postage prepaid, and so addressed, shall constitute service of notice hereunder. Any telegraphic notice given under Paragraph IV hereof shall be confirmed in writing. Either party may change, from time to time, the address to which all notices shall be mailed, provided that in the absence of any different address, the respective addresses herein first above stated shall be the addresses to which such notices shall be mailed.

XVII

Except as herein otherwise expressly provided, this agreement shall remain in force for the full term of each patent under which the respective rights, licenses and privileges are hereby granted, and shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns, provided, however, that nothing in this Paragraph XVII contained shall be construed to permit any assignment hereof or of any of the rights, licenses, and privileges herein granted, except as herein otherwise specifically provided. Nothing herein contained
9644 shall be construed as extending any license for the manufacture and/or use and/or sale of plaster board not having a metallized surface heretofore or hereafter granted under any other agreement between the parties hereto.

In the event that the exclusive right and license of the Gypsum Company, as set forth in said Schedule A hereto, shall for any reason whatsoever (whether on account of the default of the Gypsum Company or otherwise) terminate, and such termination shall have the effect of terminating or shall result in the termination of any of the rights, licenses and privileges herein granted to the Licensee, then this agreement shall immediately terminate, without further act on the part of either of the parties

hereto, provided that Licensee shall not be relieved thereby from any liability than existing, and provided further that Gypsum Company shall not be liable in any way to Licensee on account of such termination. Gypsum Company agrees that if its said exclusive right and license shall so be terminated, it will promptly notify Licensee of such termination.

XVIII

Anything hereinabove contained to the contrary notwithstanding, this agreement and the rights, licenses and privileges herein granted to the Licensee may be cancelled and terminated, at any time, by either party hereto, by at least ninety (90) days' prior written notice to the other party of the election of the party serving the notice to exercise such right of cancellation and of the date on which such cancellation shall be effective, but such cancellation shall not relieve either party from any liability accrued or due at the date of such cancellation; Provided, However, that if Gypsum Company shall exercise the right to cancel this agreement as in this paragraph provided, then within ninety (90) days of its said notice it will submit
9645 to Licensee a new contract embodying a proposal for a non-exclusive license under said patents for the life of said patents, for acceptance by Licensee within ten (10) days from the date of such submittal.

In witness whereof, the parties hereto have caused these presents to be signed by their respective Presidents, attested by their respective Secretaries, and their corporate seals to be hereunto affixed, in duplicate, the day and year first above written.

UNITED STATES GYPSUM COMPANY.

By C. F. HENNING, *Its Vice President.*

ATTEST:

C. H. SHAVER, *Secretary.*

EBSARY GYPSUM COMPANY, INC.

By F. G. EBSARY, *Its President.*

ATTEST:

GEORGE N. LENCI, *Secretary.*

9646 SCHEDULE A

The Gypsum Company has the exclusive right and license to make, use and sell building structures or elements for building structures where insulation is obtained by the use of plaster board having a metallized surface under the following patents and applications for patents known as the Alfol patents.

PATENTS

Inventor	*Patent No.*	*Issue Date*
E. Schmidt, et al	1,757,479	May 5, 1930
E. Schmidt	1,890,418	Dec. 6, 1932
Eduard Dyckerhoff	1,934,174	Nov. 7, 1933

APPLICATIONS

Inventor	*Ser. No.*	*Filing Date*
Schmidt, et al	105,753	April 30, 1926
Eduard Dyckerhoff	442,219	April 7, 1930
Ernst Schmidt	663,572	March 30, 1933

together with any divisions, continuations, renewals or reissues thereof, but it is understood that the term "building structures" is limited to the walls, floors, roofs and ceilings of buildings and does not include pipes or ducts or other heating apparatus installed in the building or refrigerating or cooling apparatus or structures whether built into the building or not, and it is further understood that Gypsum Company has no right or license under said patents or applications to use metal foil for insulators except where such foil is applied to a non-metallic member as a facing therefor.

9647 *Government's Exhibit No. 22*

PLASTER BOARD AGREEMENT—METALLIZED

This agreement, Made and entered into this 4th day of December A. D., 1934, by and between United States Gypsum Company, a corporation organized and existing under and by virtue of the laws of the State of Illinois and having its principal place of business at 300 West Adams Street, Chicago, Illinois, hereinafter referred to as the "Gypsum Company," and The American Gypsum Company, a corporation organized and existing under and by virtue of the laws of the State of Ohio and having its principal place of business at Port Clinton, Ohio, hereinafter referred to as "Licensee," witnesseth:

Whereas, Gypsum Company is the owner of United States Letters Patent to Roos No. 1,914,345, relating to wall construction, and is also the owner of certain patent rights set forth in Schedule A hereunto annexed, relating to building structures or elements for said structures; and

Whereas, Licensee desires an indivisible and non-exclusive license from Gypsum Company, under the terms and conditions hereinafter set forth and as hereinafter specified, to manufacture, use and sell plaster board under said Roos patent No. 1,914,345 and under said patent rights set forth in said Schedule A: and

Whereas, Gypsum Company is willing to grant such license, under the terms and conditions hereinafter set forth and as hereinafter specified,

Now, therefore, in consideration of the premises, the sum of One Dollar ($1.00) in hand paid, receipt of which is hereby acknowledged by Gypsum Company, and the mutual covenants herein contained, it is hereby agreed as follows:

I

Gypsum Company hereby represents and warrants that it has the right to grant the License hereby granted.

II

The term "plaster board," as herein used, is intended to include material commonly known as plasterboard and also materials known as plaster wall board, plaster lath, and plaster sheathing boards.

9648

III

Gypsum Company has agreed to and does hereby give and grant unto Licensee the indivisible, non-exclusive right, license and privilege to make, use and sell plaster board having ametallized surface embodying the inventions disclosed and claimed in said Roos Patent and in the patents or patent applications set forth in Schedule A, or in any of them; Provided, However, that the right, license and privilege herein and hereby granted is specifically limited to the plaster board and building structures incorporating the same as set forth in said Schedule A, and does not extend to any other product or structure.

IV

(a) It is expressly understood and agreed that the indivisible and non-exclusive rights, licenses and privileges

aforesaid are granted, and they are hereby accepted, upon the express condition that Gypsum Company shall have, and it hereby reserves, the right to determine and fix at any time, and to change from time to time, during the existence of said patents and so long as said rights, licenses and privileges granted hereunder shall continue, the minimum price or prices at which Licensee shall or may sell plaster board having a metallized surface which is covered by said Roos Patent or any of the said patents set forth in Schedule A, or which shall embody the inventions or improvements set forth and claimed in any patents issued upon any of the applications for patent set forth in said Schedule A, provided that the right hereinabove reserved to determine and fix the minimum price or prices of any such plaster board shall not be exercised with respect to any such plaster board embodying only the inventions or improvements, or one or more of them, set forth and claimed in any of the applications for patent set forth in said Schedule A, prior to the date when the patent or patents shall have been granted or issued upon such application or application respectively.

(b) In the event Gypsum Company shall exercise the right thus reserved, namely, to determine and fix at any time, and to change from time to time, such minimum price or prices, it shall notify Licensee of its election to exercise such right, and shall include in such notice, or accompany such notice by, a statement of such minimum price or prices at which Licensee shall or may sell said plaster board having a metallized surface, manufactured by
9649 Licensee; and thereafter shall give Licensee written or telegraphic notice of any change in such price or prices; and Licensee expressly covenants and agrees that it will not, so long as this agreement shall continue in force and effect, after receipt of such notice given in accordance with the terms and conditions hereof, directly or indirectly, sell or offer for sale any plaster board having a metallized surface manufactured by said Licensee embodying the inventions and improvements set forth in said Roos Patent or in any of said patents set forth in said Schedule A, or embodying the inventions or improvements set forth and claimed in any patents issued upon any application for patent set forth in said Schedule A, at a price or prices less than that stated by Gypsum Company in said notice or in any such written or telegraphic notice of change in said price or prices. The said minimum price or prices at

which Licensee shall or may sell said patented products as determined and fixed by Gypsum Company may be the same for all classes of trade, provided that Gypsum Company may, at any time and from time to time, determine and fix different prices for different classes of trade. It is further understood and agreed that any such minimum price or prices so determined and fixed by Gypsum Company may be made with respect to each trade market or place where said plaster board having a metallized surface may be sold, and may also be made with respect to different quantities purchased, such as carloads, less than carloads and truck loads, and that such minimum price or prices may differ in amount in each different market or place according to market conditions or quantities, all as may be determined by Gypsum Company.

(c) The said minimum price or prices so determined and fixed from time to time by Gypsum Company shall not be more than the respective price or prices at which Gypsum Company itself determines to sell such products embodying the said inventions and improvements hereinbefore mentioned, to its own like trade in the same market.

(d) It is understood and agreed that all orders, contracts, or commitments for the future sale of said plaster board having a metallized surface and embodying the inventions and improvements hereinbefore mentioned shall be made subject to establishment of, and/or change in, such minimum price at which said materials or products may be sold, and that all shipments thereof shall be made at no less than the minimum price or prices contained in any notice of establishment of, and/or change in, price or prices received before shipment; provided, however, that on all orders taken for immediate shipment at not less
9650 than the minimum price, if any, then in effect, shipments thereof may be made at the price at which taken within five days of the date of such order; provided, further, that written contracts may be made at not less than the minimum price, if any, then in effect, to furnish such patented material for any specific work or job then contemplated or under construction; Provided, Further, that where contracts for specific work or jobs have been let to general contractors before notice of establishment of, and/or change in, price, then Licensee, if it has made a commitment for any such specific work or job prior to such notice, may at any time within thirty (30) days after such notice make a written contract to furnish the material for

such specific work or job, at the price at which it was committed, but not less than the minimum price, if any, in effect at the time of such commitment. Within ten (10) days after each notice of minimum price or change thereof, Licensee will furnish to Gypsum Company a written statement of all specific work or jobs, contracts and commitments which Licensee had at the time such notice was given, showing the date of the contract or commitment, name of purchaser, location and description of specific work or job, quantity of material, and price at which the same was sold or commitment made, and shall immediately notify Gypsum Company of the making of any such contract for such specific work or job within the thirty-day term hereinbefore mentioned, and of the completion or abandonment of all specific work, jobs, contracts and commitments theretofore had by Licensee. It is understood and agreed that no such contractor commitment shall be recognized as valid hereunder, unless the contract or commitment shall have been made in good faith before notice of making a price or change thereof, and unless such contract or commitment shall have been for some specific work or job then contemplated or under construction in which such patented material specified in the said contract or commitment is to be furnished or installed.

V

As consideration for the rights, licenses, and privileges herein granted to Licensee, Licensee agrees to pay royalty to Gypsum Company for all plaster board having a metallized surface manufactured and sold by Licensee and which are covered by claims of said Roos patent or patents set forth in the said Schedule A, or patents which may be issued under any of the applications set forth under said Schedule A, or which are to be used in making structures covered by said patent rights, at the rate of forty cents (40¢) per thousand square feet surface area where
9651 only one face is metallized, and at the rate of fifty cents (50¢) per thousand square feet where both faces are metallized, on any product covered by any of the patent rights aforesaid.

VI

It is expressly understood that Licensee shall have no right, without the written consent of Gypsum Company first obtained, to manufacture any of said patented ma-

terial for any other manufacturer of plaster board, whether or not licensed under said patents, or to sell such patented material to any other such manufacturer or to deliver any of the same to any person, firm or corporation whatsoever on consignment.

VII

It is expressly and agreed that the rights, licenses and privileges herein granted are and shall be personal to Licensee, and none of said rights, licenses and privileges, nor any right herein or thereunder, shall be sold, assigned, or transferred without the written consent of Gypsum Company first obtained, nor shall Licensee permit the same, or any of them, to be transferred by operation of law; Provided, however, that such rights, licenses, and privileges may be assigned by Licensee to any company acquiring all of the business and assets of said Licensee, on condition that Licensee shall first obtain an agreement in writing from any such assignee, in which such agreement such assignee agrees to assume all of the obligations of Licensee under this agreement and agrees to be bound by all of the terms and conditions hereof, and shall deliver such agreement to Gypsum Company.

VIII

In the event Gypsum Company shall, subsequent to the effective date hereof, grant to any other person, firm or corporation, any license under said Roos Patent or under said patents or application for patent set forth in said Schedule A, for the manufacture, use, or sale of plaster board having a metallized surface, and embodying the claims or inventions set forth and claimed in said patents or said applications for patent, upon terms more favorable than those granted hereunder to Licensee, then Gypsum Company will grant to Licensee a license upon the same terms, or will extend to Licensee the same right granted to such other licensee.

9652 IX

Licensee agrees to keep true and accurate books of account, showing the total amount of plaster board having a metallized surface manufactured and/or sold by Licensee under the rights, licenses and privileges herein granted, and the prices at which the same have been sold. Such books and records shall at all times during business-

hours be open to the inspection of Gypsum Company or its duly authorized representatives. Gypsum Company shall have the right to make copies of any of such records and make memoranda therefrom, provided that if at the time of such examination Licensee shall so request, such examination shall be made by a certified public accountant satisfactory to Gypsum Company, in which event the expense of such examination by the said certified public accountant shall be borne by Licensee.

X

Licensee agrees that on or before the fifteenth day of each calendar month it will furnish to Gypsum Company a written report, under the hand and verification of some officer or other duly authorized agent of Licensee, showing the total amount of plaster board having a metallized surface sold by Licensee during the preceding calendar month and which was manufactured by Licensee under the rights, licenses and privileges herein granted, and also showing whether such plaster board had one or two metallized surfaces, together with the prices at which the same shall have been sold, and at the time of furnishing such report, Licensee will pay to Gypsum Company the full royalty as herein provided for such plaster board having a metallized surface so sold by Licensee during such preceding calendar month. Such reports shall be furnished to Gypsum Company at its principal office, at Chicago, Illinois.

XI

Licensee expressly covenants and agrees that all sales by Licensee hereunder of plaster board having a metallized surface shall be bona fide sales thereof, and Licensee further expressly covenants and agrees that no such products shall be placed on consignment. For the purposes of this agreement, a sale shall be considered to have been made not later than the date on which the goods are shipped.

XII

Licensee agrees that all plaster board having a metallized surface sold by it hereunder shall be numbered
9653 with the respective numbers of any appropriate patents under which the rights, licenses and privileges herein granted are granted, and covering the manufacture, sale, or use thereof. Gypsum Company shall have the right from time to time to specify the substance of the notice with which said products shall be so marked.

XIII

As one of the considerations for the indivisible and non-exclusive rights, licenses and privileges herein and hereby granted to Licensee, Licensee agrees that it will not at any time during the life of this agreement, or during the existence of said rights, licenses and privileges, directly or indirectly, by itself or through or together with another or others, contest the validity of said letters patent, or of said patent rights, or of any letters patent hereafter issued upon said applications so set forth in said Schedule A, or the right or title of Gypsum Company therein or thereto as herein or as in said Schedule A set forth, but in the event that any of said patents under which Licensee is licensed hereunder is held invalid or of limited construction by a court of competent jurisdiction from whose decision no appeal is or can be taken, then the Licensee shall have the right to make, use or vend the structure so held to be outside of the scope of said patent rights, free and clear of the terms of this agreement.

Licensee agrees to give prompt notice of any suit or action which shall be brought against it in consequence of practicing the inventions set forth in said patents and said patent rights, and thereupon, if Gypsum Company shall desire to conduct the defense of such suit or action, it shall have the right to do so but Licensee shall have the right, in such event, to be represented in such suit or action, at its own expense, by counsel of its own selection. Gypsum Company shall not, by undertaking to conduct the defense of any such suit or action, be under any obligation to indemnify the Licensee against any judgment, order or decree or other result therein.

XIV

(a) In the event Licensee shall fail to make any report or shall fail to pay the royalty herein provided to be paid, or in the event that Licensee shall sell any of the materials covered by the price restriction provisions of Paragraph IV hereof, at a price or prices lower than the specified price or prices established and fixed by Gypsum Company as herein provided, Gypsum Company shall have the right to cancel all of the rights, licenses and privileges herein granted to Licensee; provided, however, that Licensee shall not be relieved thereby from any liability accrued at the time of such cancellation. In the event of any such breach, Gypsum Company shall give

9654

written notice to Licensee of the default or defaults claimed by Gypsum Company to have occurred, and of the desire of Gypsum Company to cancel the rights, licenses and privileges of Licensee hereunder; and if Licensee shall not make good the default or defaults complained of within a period of thirty (30) days from the giving of such notice then all of the rights, licenses and privileges of Licensee hereunder shall forthwith cease and terminate without further action on the part of Gypsum Company; provided, however, that if, upon the giving of any such notice, Licensee shall deny that the defaults, or any of them, complained of have occurred, then the question as to whether the default or defaults, the occurrence of which is so denied by Licensee, have in fact occurred, shall be referred to arbitration under Paragraph XV hereof.

(b) In the event that such arbiters find that such default or defaults have occurred, then Licensee shall promptly cure the same, and in any event shall cure the same within thirty (30) days from the date of the finding of such arbiters; and in the event such default or defaults shall not be so cured within the time limited, then the rights, licenses and privileges herein granted to Licensee shall forthwith cease and determine without further action on the part of Gypsum Company; the terminationof said rights; licenses and privileges following the finding of the arbiters as aforesaid shall not release Licensee from any liability then existing.

(c) In the event (1) that Licensee shall be adjudicated a bankrupt, or (2) a receiver shall be appointed for Licensee, whose appointment shall not be vacated within sixty (60) days thereafter, then the rights, licenses and privileges herein granted to Licensee shall forthwith cease and determine, without further action on the part of Gypsum Company, provided that such termination shall not relieve Licensee of any and all liability then existing.

(d) The waiver by Gypsum Company of any breach on the part of Licensee shall not be interpreted as constituting a waiver of any further or other breach or breaches.

(e) In the event any default shall have occurred as specified in sub-paragraph (a) of this paragraph XIV, Gypsum Company may give notice of such default without stating its desire to terminate the rights, Licenses and privileges

herein granted to Licensee, and in the event such
9655 default shall not be cured by Licensee within the times mentioned in said sub-paragraph (a), Gypsum Company shall have the right, without terminating the said rights, Licenses and privileges herein granted to Licensee, to maintain any appropriate action hereunder, at law or in equity, for the collection of license fees or royalties, or for damages, or for any other remedy as may be appropriate. The provisions mentioned in said sub-paragraph (a) with respect to arbitrating the fact as to whether any default or defaults complained of has or have in fact occurred, shall be applicable in all respects in the event notice of default is given without any statement by Gypsum Company of its desire to terminate the rights, licenses and privileges herein granted to Licensee, excepting that if the arbiters shall find that any of said defaults complained of shall have occurred, then Gypsum Company shall have the same right, without a termination of said rights, licenses and privileges so granted to Licensee, to maintain its appropriate action hereunder.

XV

Any question subject to arbitration under any provision of this contract shall be arbitrated in accordance with the rules then obtaining of the American Arbitration Association. The finding or findings of the arbiters with respect to the occurrence or non-occurrence of any claim default, shall be final and conclusive. In the event the finding or findings of the arbiters shall be with respect to any default or defaults, or claimed default or defaults, in the payment of royalties or other sums of money herein required to be paid by the Licensee to Gypsum Company and the arbiters shall find that such default or defaults shall have occurred, the arbiters shall in their finding fix and determine the amount of royalties or other sums of money due from Licensee to Gypsum Company, whereupon Licensee will promptly pay the same to Gypsum Company, and in any event will pay the same within the times hereinbefore mentioned in Paragraph XIV hereof for the curing of defaults, provided that Gypsum Company shall have the right (but without being limited to such remedy) to have a summary judgment entered in its favor against Licensee for the amount so found to be due by the arbiters in any court of competent jurisdiction.

XVI

Any notice to be given under the terms hereof may be served by either party by mailing such notice to the other party hereto, by registered mail, postage prepaid, addressed to such party at its last known principal office, and the deposit of any such notice in the United States mails, registered, postage prepaid, and so addressed, shall constitute service of notice hereunder. Any telegraphic
9656 notice given under Paragraph IV hereof shall be confirmed in writing. Either party may change, from time to time, the address to which all notices shall be mailed, provided that in the absence of any different address, the respective addresses herein first above stated shall be the addresses to which such notices shall be mailed.

XVII

Except as herein otherwise expressly provided, the agreement shall remain in force for the full term of each patent under which the respective rights, licenses and privileges are hereby granted, and shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns, provided, however, that nothing in this paragraph XVII contained shall be construed to permit any assignment hereof or of any of the rights, licenses, and privileges herein granted, except as herein otherwise specifically provided. Nothing herein contained shall be construed as extending any license for the manufacture and/or use and/or sale of plaster board not having a metallized surface heretofore or hereafter granted under any other agreement between the parties hereto.

In the event that the exclusive right and license of the Gypsum Company, as set forth in said Schedule A hereto, shall for any reason whatsoever (whether on account of the default of the Gypsum Company or otherwise) terminated, and such termination shall have the effect of terminating or shall result in the termination of any of the rights, licenses and privileges herein granted to the Licensee, then this agreement shall immediately terminate, without further act on the part of either of the parties hereto, provided that Licensee shall not be relieved thereby from any liability then existing, and provided further that Gypsum Company shall not be liable in any way to Licensee on account of such termination. Gypsum Company agrees that if its said exclusive right and license shall so be terminated, it will promptly notify Licensee of such termination.

XVIII

Anything hereinabove contained to the contrary notwithstanding, this agreement and the rights, licenses and privileges herein granted to the Licensee may be cancelled and terminated, at any time, by either party hereto, by at least ninety (90) days' prior written notice to the other party of the election of the party serving the notice to exercise such right of cancellation and of the date on which such cancellation shall be effective, but such cancellation shall not relieve either party from any liability accrued or due at the date of such cancellation; Provided, However, that if Gypsum Company shall exercise
9657 the right to cancel this agreement as in this paragraph provided, then within ninety (90) days of its said notice it will submit to Licensee a new contract embodying a proposal for a non-exclusive license under said patents for the life of said patents, for acceptance by Licensee within ten (10) days from the date of such submittal.

In witness whereof, the parties hereto have caused these presents to be signed by their respective Presidents, attested by their respective Secretaries, and their corporate seals to be hereunto affixed, in duplicate, the date and year first above written.

UNITED STATES GYPSUM COMPANY,

By (Signed) C. F. HENNING,
Its Vice President.

ATTEST:

(Signed) C. H. THAVER,
Secretary.

THE AMERICAN GYPSUM COMPANY,

By (Signed) C. F. MILLER,
Its President.

ATTEST:

(Signed) J. D. KLING,
Secretary.

9658 SCHEDULE A

The Gypsum Company has the exclusive right and license to make, use and sell building structures or elements for building structures where insulation is obtained by the use of plaster board having a metallized surface

uder the following patents and applications for patents known as the Alfol Patents.

PATENTS

Inventor	*Patent No.*	*Issue Date*
E. Schmidt, et al	1,757,479	May 5, 1930
E. Schmidt	1,890,418	Dec. 6, 1932
Eduard Dyckerhoff	1,934,174	Nov. 7, 1933

APPLICATIONS

Inventor	*Ser. No.*	*Filing Date*
Schmidt, et al	105,753	April 30, 1926
Eduard Dyckerhoff	442,219	April 7, 1930
Ernst Schmidt	663,572	March 30, 1933

together with any divisions, continuations, renewals or reissues thereof, but it is understood that the term "building structures" is limited to the walls, floors, roofs and ceilings of buildings and does not include pipes or ducts or other heating apparatus installed in the building or refrigerating or cooling apparatus or structures whether built into the building or not, and it is further understood that Gypsum Company has no right or license under said patents or applications to use metal foil for insulators except where such foil is applied to a non-metallic member as a facing therefor.

9659 *Government's Exhibit No. 23*

Memorandum of agreement by and between The Celotex Corporation, a Delaware corporation (hereinafter called "Celotex"), and The American Gypsum Company, an Ohio corporation (hereinafter called "American"), witnesseth:

Whereas, Celotex has acquired and now owns all of the capital stock of American and proposes to acquire all of the assets and business of American; and

Whereas, among the assets of American is the license granted to it by United States Gypsum Company, an Illinois corporation, under a license agreement between said United States Gypsum Company and American, dated December 4, 1934; and

Whereas, said license agreement provides that the license therein granted may be assigned by American to any company acquiring all the assets and business or all the capital stock of American, on condition that American

shall first obtain an agreement in writing from any such assignee agreeing to assume all of the obligations of American under said license agreement and to be bound by all of the terms and conditions thereof and shall deliver such agreement to the United States Gypsum Company, Licensor;

Now, therefore, it is mutually agreed that in connection with the acquisition by Celotex of all the assets and business of American, American will assign to Celotex all American's right, title and interest in and to the license granted to American in and by the license agreement between United States Gypsum Company, an Illinois corporation, and American, dated December 4, 1934, and Celotex agrees to assume and does hereby assume all of the obligations of American as Licensee under said license agreement, and agrees to be bound by all of the terms and conditions of said license agreement.

9660 In witness whereof the parties hereto have caused this instrument to be executed in duplicate in their respective names and by their duly authorized officers and their corporate seals to be hereunto affixed, this 12th day of April, 1939.

THE CELOTEX CORPORATION,

By ——— ——— *Vice President*

ATTEST:

M. D. MUSGROVE, *Assistant Secretary*

THE AMERICAN GYPSUM COMPANY,

By C. F. MILLER, *President*

ATTEST:

O. S. MANSELL *Secretary.*

STATE OF OHIO,
County of Ottawa, } ss:

I, Emil E Lang, a notary public in and for said county in the state aforesaid, do hereby certify that C. F. Miller and O. S. Mansell, personally known to me, and known to me to be the same persons whose names are subscribed to the foregoing instrument as vice president and secretary, respectively, of The American Gypsum Company, an Ohio corporation, appeared before me this day in person and severally acknowledged that they, being thereunto duly authorized by the board of directors and stockholders of said corporation, signed, sealed with the corporate

9661 seal and delivered said instrument as the free and voluntary act of said corporation and as their own free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 12th day of April, 1939.

EMIL E LANG,
Notary Public.

My commission expires 1/18/41.

STATE OF OHIO,
County of Ottawa, } ss:

I, Emil E. Lang, a notary public in and for said county in the state aforesaid, do hereby certify that O. S. Mansell and M. D. Musgrove personally known to me, and known to me to be the same persons whose names are subscribed to the foregoing instrument as vice president and assistant secretary, respectively, of The Celotex Corporation, a Delaware corporation, appeared before me this day in person and severally acknowledged that they, being thereunto duly authorized by the board of directors of said corporation, signed, sealed with the corporate seal, and delivered said instrument as the free and voluntary act of said corporation and as their own free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 12th day of April 1939.

EMIL E LANG,
Notary Public

My commission expires 1/18/41.

9662 *Government's Exhibit No. 24*

PLASTER BOARD AGREEMENT

This agreement, made and entered into this 12th day of October A. D. 1934, by and between United States Gypsum Company, a corporation organized and existing under and by virtue of the laws of the State of Illinois and having its principal place of business at 300 West Adams Street, Chicago, Illinois, hereinafter referred to as the "Gypsum Company," and Kelley Plasterboard Company, Inc., a corporation organized and existing under and by virtue of the laws of the State of New Jersey, and having its principal

place of business at Delawanna, (Clifton) New Jersey, hereinafter referred to as "Licensee," witnesseth:

Whereas, Gypsum Company is the owner of United States Letters Patent to Roos No. 1,914,345, relating to wall construction, and is also the owner of certain patent rights set forth in Schedule A hereunto annexed, relating to building structures or elements for said structures; and

Whereas, Licensee desires an indivisible and non-exclusive license from Gypsum Company, under the terms and conditions hereinafter set forth and as hereinafter specified, to manufacture, use and sell plaster board under said Roos Patent No. 1,914,345 and under said patent rights set forth in said Schedule A; and

Whereas, Gypsum Company is willing to grant such license, under the terms and conditions hereinafter set forth and as hereinafter specified,

Now, therefore, in consideration of the premises, the sum of One Dollar ($1.00) in hand paid, receipt of which
9663 is hereby acknowledged by Gypsum Company, and the mutual covenants herein contained, it is hereby agreed as follows:

I

Gypsum Company hereby represents and warrants that it has the right to grant the license hereby granted.

II

The term "plaster board," as herein used, is intended to include material commonly known as plasterboard and also materials known as plaster wall board, plaster lath, and plaster sheathing boards.

III

Gypsum Company has agreed to and does hereby give and grant unto Licensee the indivisible, non-exclusive right, license and privilege to make, use and sell plaster board having a metallized surface embodying the inventions disclosed and claimed in said Roos Patent and in the patents or patent applications set forth in Schedule A, or in any of them; Provided, However, that the right, license and privilege herein and hereby granted is specifically limited to the plaster board and building structures incorporating the

same as set forth in said Schedule A, and does not extend to any other product or structure.

IV

(a) It is expressly understood and agreed that the indivisible and non-exclusive rights, licenses and privileges aforesaid are granted, and they are hereby accepted, upon the express condition that Gypsum Company shall have, and it hereby reserves, the right to determine and fix at any time, and to change from time to time, during the existence of said patents and so long as said rights, licenses and privileges granted hereunder shall con-
9664 tinue, the minimum price or prices at whch Licensee shall or may sell plaster board having a metallized surface which is covered by said Roos Patent or any of the said patents set forth in Schedule A, or which shall embody the inventions or improvements set forth and claimed in any patents issued upon any of the applications for patent set forth in said Schedule A, provided that the right hereinabove reserved to determine and fix the minimum price or prices of any such plaster board shall not be exercised with respect to any such plaster board embodying only the inventions or improvements, or one or more of them, set forth and claimed in any of the applications for patent set forth in said Schedule A, prior to the date when the patent or patents shall have been granted or issued upon such application or applications, respectively.

(b) In the event Gypsum Company shall exercise the right thus reserved, namely, to determine and fix at any time, and to change from time to time, such minimum price or prices, it shall notify Licensee of its election to exercise such right, and shall include in such notice, or accompany such notice by, a statement of such minimum price or prices at which Licensee shall or may sell said plaster board having a metallized surface, manufactured by Licensee, and thereafter shall give Licensee written or telegraphic notice of any change in such price or prices; and Licensee expressly covenants and agrees that it will not, so long as this agreement shall continue in force and effect, after receipt of such notice given in accordance with the terms and conditions hereof, directly or indirectly, sell or offer for sale any plaster board having a metallized surface manufactured by said Licensee embodying the inventions and improvements set forth in said Roos Patent

or in any of said patents set forth in said Schedule A,
9665 or embodying the inventions or improvements set forth and claimed in any patents issued upon any applications for patent set forth in said Schedule A, at a price or prices less than that stated by Gypsum Company in said notice or in any such written or telegraphic notice of change in said price or prices. The said minimum price or prices at which Licensee shall or may sell said patented products as determined and fixed by Gypsum Company may be the same for all classes of trade, provided that Gypsum Company may, at any time and from time to time, determine and fix different prices for different classes of trade. It is further understood and agreed that any such minimum price or prices so determined and fixed by Gypsum Company may be made with respect to each trade market or place where said plaster board having a metallized surface may be sold, and may also be made with respect to different quantities purchased, such as carloads, less than carloads and truck loads, and that such minimum price or prices may differ in amount in each different market or place according to market conditions or quantities, all as may be determined by Gypsum Company.

(c) The said minimum price or prices so determined and fixed from time to time by Gypsum Company shall not be more than the respective price or prices at which Gypsum Company itself determines to sell such products embodying the said inventions and improvements hereinbefore mentioned, to its own like trade in the same market.

(d) It is understood and agreed that all orders, contracts, or commitments for the future sale of said plaster board having a metallized surface and embodying the inventions and improvements hereinbefore mentioned shall be made subject to establishment of, and/or change in, such minimum price at which said materials or products may be sold, and that all shipments thereof shall be
9666 made at no less than the minimum price or prices contained in any notice of establishment of, and/or change in, price or prices received before shipment; provided, however, that on all orders taken for immediate shipment at not less than the minimum price, if any, then in effect, shipment thereof may be made at the price at which taken within five days of the date of such order; provided, further, that written contracts may be made at not less than the minimum price, if any, then in effect, to furnish

such patented material for any specific work or job then contemplated or under construction; Provided, Further, that where contracts for specific work or jobs have been let to general contractors before notice of establishment of, and/or change in, price, then Licensee, if it has made a commitment for any such specific work or job prior to such notice, may at any time within thirty (30) days after such notice make a written contract to furnish the material for such specific work or job, at the price at which it was committed, but not less than the minimum price, if any, in effect at the time of such commitment. Within ten (10) days after each notice of minimum price or change thereof, Licensee will furnish to Gypsum Company a written statement of all specific work or jobs, contracts and commitments which Licensee had at the time such notice was given, showing the date of the contract or commitment, name of purchaser, location and description of specific work or job, quantity of material, and price at which the same was sold or commitment made, and shall immediately notify Gypsum Company of the making of any such contract for such specific work or job within the thirty-day term hereinbefore mentioned, and of the completion or abandonment of all specific work, jobs, contracts and commitments theretofore had by Licensee. It is understood and agreed that no such contract or commitment shall
9667 be recognized as valid hereunder, unless the contract or commitment shall have been made in good faith before notice of making a price or change thereof, and unless such contract or commitment shall have been for some specific work or job then contemplated or under construction in which such patented material specified in the said contract or commitment is to be furnished or installed.

V

As consideration for the rights, licenses, and privileges herein granted to Licensee, Licensee agrees to pay royalty to Gypsum Company for all plaster board having a metallized surface manufactured and sold by Licensee and which are covered by claims of said Roos patent or patents set forth in the said Schedule A, or patents which may be issued under any of the applications set forth under said Schedule A, or which are to be used in making structures covered by said patent rights, at the rate of forty cents (40¢) per thousand square feet surface area where only one face

is metallized, and at the rate of fifty cents (50¢) per thousand square feet where both faces are metallized, on any product covered by any of the patent rights aforesaid.

VI

It is expressly understood that Licensee shall have no right, without the written consent of Gypsum Company first obtained, to manufacture any of said patented material for any other manufacturer of plaster board, whether or not licensed under said patents, or to sell such patented material to any other such manufacturer, or to deliver any of the same to any person, firm or corporation whatsoever on consignment.

VII

It is expressly understood and agreed that the
9668 rights, licenses and privileges herein granted are and shall be personal to Licensee, and none of said rights, licenses and privileges, nor any right herein or thereunder, shall be sold, assigned, or transferred without the written consent of Gypsum Company first obtained, nor shall Licensee permit the same, or any of them, to be transferred by operation of law; Provided, however, that such rights, licenses, and privileges may be assigned by Licensee to any company acquiring all of the business and assets of said Licensee, on condition that Licensee shall first obtain an agreement in writing from any such assignee, in which such agreement such assignee agrees to assume all of the obligations of Licensee under this agreement and agrees to be bound by all of the terms and conditions hereof, and shall deliver such agreement to Gypsum Company.

VIII

In the event Gypsum Company shall, subsequent to the effective date hereof, grant to any other person, firm or corporation, any license under said Roos Patent or under said patents or applications for patent set forth in said Schedule A, for the manufacture, use, or sale of plaster board having a metallized surface, and embodying the claims or inventions set forth and claimed in said patents or said applications for patent, upon terms more favorable than those granted hereunder to Licensee, then Gypsum Company will grant to Licensee a license upon the same terms, or will extend to Licensee the same right granted to such other licensee.

IX

Licensee agrees to keep true and accurate books of account, showing the total amount of plaster board having a metallized surface manufactured and/or sold by Li-
9669 censee under the rights, licenses and privileges herein granted, and the prices at which the same have been sold. Such books and records shall at all times during business hours be open to the inspection of Gypsum Company or its duly authorized representatives. Gypsum Company shall have the right to make copies of any of such records and make memoranda therefrom, provided that if at the time of such examination Licensee shall so request, such examination shall be made by a certified public accountant satisfactory to Gypsum Company, in which event the expense of such examination by the said certified public accountant shall be borne by Licensee.

X

Licensee agrees that on or before the fifteenth day of each calendar month it will furnish to Gypsum Company a written report, under the hand and verification of some officer or other duly authorized agent of Licensee, showing the total amount of plaster board having a metallized surface sold by Licensee during the preceding calendar month and which was manufactured by Licensee under the rights, licenses and privileges herein granted, and also showing whether such plaster board had one or two metallized surfaces, together with the prices at which the same shall have been sold, and at the time of furnishing such report, Licensee will pay to Gypsum Company the full royalty as herein provided for such plaster board having a metallized surface so sold by Licensee during such preceding calendar month. Such reports shall be furnished to Gypsum Company at its principal office, at Chicago, Illinois.

XI

Licensee expressly covenants and agrees that all sales by Licensee hereunder of plaster board having a metallized surface shall be bona fide sales thereof, and Licensee
9670 further expressly covenants and agrees that no such products shall be placed on consignment. For the purposes of this agreement, a sale shall be considered to have been made not later than the date on which the goods are shipped.

XII

Licensee agrees that all plaster board having a metallized surface sold by it hereunder shall be numbered with the respective numbers of any appropriate patents under which the rights, licenses and privileges herein granted are granted, and covering the manufacture, sale, or use thereof. Gypsum Company shall have the right from time to time to specify the substance of the notice with which said products shall be so marked.

XIII

As one of the considerations for the indivisible and non-exclusive rights, licenses and privileges herein and hereby granted to Licensee, Licensee agrees that it will not at any time during the life of this agreement, or during the existence of said rights, licenses and privileges, directly or indirectly, by itself or through or together with another or others, contest the validity of said letters patent, or of said patent rights, or of any letters patent hereafter issued upon said applications so set forth in said Schedule A, or the right or title of Gypsum Company therein or thereto as herein or as in said Schedule A set forth, but in the event that any of said patents under which Licensee is licensed hereunder is held invalid or of limited construction by a court of competent jurisdiction from whose decision no appeal is or can be taken, then the Licensee shall have the right to make, use or vend the structure so held to be outside of the scope of said patent rights, free and clear of the terms of this agreement.

9671 Licensee agrees to give prompt notice of any suit or action which shall be brought against it in consequence of practicing the inventions set forth in said patents and said patent rights, and thereupon, if Gypsum Company shall desire to conduct the defense of such suit or action, it shall have the right to do so, but Licensee shall have the right, in such event, to be represented in such suit or action, at its own expense, by counsel of its own selection. Gypsum Company shall not, by undertaking to conduct the defense of any such suit or action, be under any obligation to indemnify the Licensee against any judgment, order or decree or other result therein.

XIV

(a) In the event Licensee shall fail to make any report or shall fail to pay the royalty herein provided to be paid, or in the event that Licensee shall sell any of the materials covered by the price restriction provisions of Paragraph IV hereof, at a price or prices lower than the specified price or prices established and fixed by Gypsum Company as herein provided, Gypsum Company shall have the right to cancel all of the rights, licenses and privileges herein granted to Licensee; provided, however, that Licensee shall not be relieved thereby from any liability accrued at the time of such cancellation. In the event of any such breach, Gypsum Company shall give written notice to Licensee of the default or defaults claimed by Gypsum Company to have occurred, and of the desire of Gypsum Company to cancel the rights, licenses and privileges of Licensee hereunder; and if Licensee shall not make good the default or defaults complained of within a period of thirty (30) days from the giving of such notice, then all of the rights, licenses and privileges of Licensee hereunder shall forthwith cease and terminate without further action on the
9672 part of Gypsum Company; provided, however, that if, upon the giving of any such notice, Licensee shall deny that the defaults, or any of them, complained of have occurred, then the question as to whether the default or defaults, the occurrence of which is so denied by Licensee, have in fact occurred, shall be referred to arbitration under Paragraph XV hereof.

(b) In the event that such arbiters find that such default or defaults have occurred, then Licensee shall promptly cure the same, and in any event shall cure the same within thirty (30) days from the date of the finding of such arbiters; and in the event such default or defaults shall not be so cured within the time limited, then the rights, licenses and privileges herein granted to Licensee shall forthwith cease and determine without further action on the part of Gypsum Company; the termination of said rights, licenses and privileges following the finding of the arbiters as aforesaid shall not release Licensee from any liability then existing.

(c) In the event (1) that Licensee shall be adjudicated a bankrupt, or (2) a receiver shall be appointed for Licensee, whose appointment shall not be vacated within sixty

(60) days thereafter, then the rights, licenses and privileges herein granted to Licensee shall forthwith cease and determine, without further action on the part of Gypsum Company, provided that such termination shall not relieve Licensee of any and all liability then existing.

(d) The waiver by Gypsum Company of any breach on the part of Licensee shall not be interpreted as constituting a waiver of any further or other breach or breaches.

(e) In the event any default shall have occurred as specified in sub-paragraph (a) of this Paragraph XIV, Gypsum Company may give natice of such default without stating its desire to terminate the rights, licenses and privileges herein granted to Licensee, and in the event
9673 such defaults shall not be cured by Licensee within the times mentioned in said sub-paragraph (a), Gypsum Company shall have the right, without terminating the said rights, licenses and privileges herein granted to Licensee, to maintain any appropriate action hereunder, at law or in equity, for the collection of license fees or royalties, or for damages, or for any other remedy as may be appropriate. The provisions mentioned in said sub-paragraph (a) with respect to arbitrating the fact as to whether any default or defaults complained of has or have in fact occurred, shall be applicable in all respects in the event notice of default is given without any statement by Gypsum Company of its desire to terminate the rights, licenses and privileges herein granted to Licensee, excepting that if the arbiters shall find that any of said defaults complained of shal have occurred, then Gypsum Company shall have the same right, without a termination of said rights, licenses and privileges so granted to Licensee, to maintain its appropriate action hereunder.

XV

Any question subject to arbitration under any provision of this contract shall be arbitrated in accordance with the rules then obtaining of the American Arbitration Association. The finding or findings of the arbiters with respect to the occurrence or non-occurrence of any claimed default, shall be final and conclusive. In the event the finding or findings of the arbiters shall be with respect to any default or defaults, or claimed default or defaults, in the payment of royalties or other sums of money herein required to be paid by the Licensee to Gypsum Company and the arbiters

shall find that such default or defaults shall have occurred, the arbiters shall in their finding fix and determine the amount of royalties or other sums of money due from Licensee to Gypsum Company, whereupon Licensee will
9674 promptly pay the same to Gypsum Company, and in any event will pay the same within the times hereinbefore mentioned in Paragraph XIV hereof for the curing of defaults, provided that Gypsum Company shall have the right (but without being limited to such remedy) to have a summary judgment entered in its favor against Licensee for the amount so found to be due by the arbiters in any court of competent jurisdiction.

XVI

Any notice to be given under the terms hereof may be served by either party by mailing such notice to the other party hereto, by registered mail, postage prepaid, addressed to such party at its last known principal office, and the deposit of any such notice in the United States mails, registered, postage prepaid, and so addressed, shall constitute service of notice hereunder. Any telegraphic notice given under Paragraph IV hereof shall be confirmed in writing. Either party may change, from time to time, the address to which all notices shall be mailed, provided that in the absence of any different address, the respective addresses herein first above stated shall be the addresses to which such notices shall be mailed.

XVII

Except as herein otherwise expressly provided, this agreement shall remain in force for the full term of each patent under which the respective rights, licenses and privileges are hereby granted, and shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns, provided, however, that nothing in this Paragraph XVII contained shall be construed to permit any assignment hereof or of any of the rights, licenses, and privileges herein granted, except as herein otherwise specifically provided. Nothing herein contained shall
9675 be construed as extending any license for the manufacture and/or use and/or sale of plaster board not having a metallized surface heretofore or hereafter granted under any other agreement between the parties hereto.

In the event that the exclusive right and license of the Gypsum Company, as set forth in said Schedule A hereto, shall for any reason whatsoever (whether on account of

the default of the Gypsum Company or otherwise) terminate, and such termination shall have the effect of terminating or shall result in the termination of any of the rights, licenses and privileges herein granted to the Licensee, then this agreement shall immediately terminate, without further act on the part of either of the parties hereto, provided that Licensee shall not be relieved thereby from any liability then existing, and provided further that Gypsum Company shall not be liable in any way to Licensee on account of such termination. Gypsum Company agrees that if its said exclusive right and license shall so be terminated, it will promptly notify Licensee of such termination.

XVIII

Anything hereinabove contained to the contrary notwithstanding, this agreement and the rights, licenses and privileges herein granted to the Licensee may be cancelled and terminated, at any time, by either party hereto, by at least ninety (90) days' prior written notice to the other party of the election of the party serving the notice to exercise such right of cancellation and of the date on which such cancellation shall be effective, but such cancellation shall not relieve either party from any liability accrued or due at the date of such cancellation; Provided, However, that if Gypsum Company shall exercise the right to cancel this agreement as in this paragraph provided, then within ninety (90) days of its said notice it will submit to Li-
9676 censee a new contract embodying a proposal for a non-exclusive license under said patents for the life of said patents, for acceptance by Licensee within ten (10) days from the date of such submittal.

In witness whereof, the parties hereto have caused these presents to be signed by their respective Presidents, attested by their respective Secretaries, and their corporate seals to be hereunto affixed, in duplicate, the day and year first above written.

UNITED STATES GYPSUM COMPANY,

By C. F. HENNING, *Its Vice President.*

ATTEST:

T. R. PARRISH, *Asst. Secretary*

KELLEY PLASTERBOARD COMPANY, INC.

By S. J. KELLEY, *Its President.*

ATTEST:

G. A. WILEMAN, *Secretary.*

9677 SCHEDULE A

The Gypsum Company has the exclusive right and license to make, use and sell building structures or elements for building structures where insulation is obtained by the use of plaster board having a metallized surface uder the following patents and applications for patents known as the Alfol patents.

PATENTS

Inventor	*Patent No.*	*Issue Date*
E. Schmidt, et al	1,757,479	May 6, 1930
E. Schmidt	1,890,418	Dec. 6, 1932
Eduard Dyckerhoff	1,934,174	Nov. 7, 1933

APPLICATIONS

Inventor	*Ser. No.*	*Filing Date*
Schmidt, et al	105,753	April 30, 1926
Eduard Dyckerhoff	442,219	April 7, 1930
Ernst Schmidt	663,572	March 30, 1933

together with any divisions, continuations, renewals or reissues thereof, but it is understood that the term "building structures" is limited to the walls, floors, roofs and ceilings of buildings and does not include pipes or ducts or other heating apparatus installed in the building or refrigerating or cooling apparatus whether built into the building or not, or cooling apparatus or structures whether built into the building or not, and it is further understood that Gypsum Company has no right or license under said patents or applications to use metal foil for insulators except where such foil is applied to a non-metallic member as a facing therefor.

9678 *Government's Exhibit No. 25*

This agreement, made and entered into this 3rd day of January, A.D. 1939, by and between the United States Gypsum Company, an Illinois corporation, of Chicago, Illinois (hereinafter sometimes referred to as "Gypsum"), and Newark Plaster Company, a New Jersey corporation, of Newark, New Jersey, resulting from the merger of Newark Plaster Company, a New Jersey corporation, of Newark, New Jersey, and Kelley Plasterboard Company, Inc., a New Jersey corporation (hereinafter sometimes referred to as "Newark"), witnesseth, that:

Whereas, Gypsum and said Kelley Plasterboard Company, Inc., entered into a certain license agreement dated October 12, 1934, under the terms of which Gypsum, as licensor therein named, granted to said Kelley Plasterboard

Company, Inc., as licensee therein named, certain rights, licenses and privileges under certain patents relating to the manufacture and sale of plasterboard having a metallized surface, as therein more particularly described and set forth; and

Whereas, said Newark Plaster Company existing before said merger and said Kelley Plasterboard Company, Inc., have effected a merger in accordance with the provisions of the New Jersey General Corporation Law, under the corporate name of Newark Plaster Company, and said Kelley
Plasterboard Company, Inc., has assigned, trans-
9679 ferred and set over unto Newark, all of its right,
title and interest in and to said license agreement and the rights, licenses and privileges therein contained, upon and subject to all of the conditions, terms and agreements as in said license agreement set forth; and

Whereas, it is provided in said license agreement that the rights, licenses and privileges therein granted are and shall be personal to licensee, and none of said rights, licenses and privileges, nor any right therein or thereunder, shall be sold, assigned or transferred without the written consent of Gypsum first obtained, nor shall licensee permit the same, or any of them, to be transferred by operation of law; provided, however, that such rights, licenses and privileges may be assigned by licensee to any company acquiring all of the business and assets of said licensee, on condition that licensee shall first obtain an agreement in writing from any such assignee, in which such agreement such assignee agrees to assume all of the obligations of the licensee under said agreement, and agrees to be bound by all of the terms and conditions thereof, and shall deliver such agreement to licensor,

Now, therefore, in consideration of the sum of One Dollar ($1.00), and other good and valuable considerations, each to the other in hand paid, receipt whereof is hereby acknowledged by each of the parties hereto, and in consideration of the mutual covenants and agreements hereinafter contained, the parties hereto have agreed as follows:

1. Gypsum consents to the assignment to Newark
9680 of the said license agreement, together with all of
the rights, licenses and privileges therein contained, subject to all of the conditions, terms and agreements as in said license agreement set forth.

2. Newark agrees to, and does hereby, assume all of the obligations of licensee under said license agreement,

and agrees to be bound by all of the terms and conditions thereof to the same effect as if Newark originally had been named in said license agreement as licensee therein.

3. In case Newark shall at any time sell any plasterboard having a metallized surface covered by the claims of said patents, or cause the same to be sold, through or by any of its wholly owned subsidiaries, then Sections IX and X of said license agreement shall be read as if the words "or sold by its wholly owned subsidiary" were inserted after the words "sold by licensee", wherever such last mentioned words appear in said Sections IX and X of said license agreement. The sales or acts of any such subsidiary shall, for all purposes of said license agreement, be construed as the sales or acts of Newark, as such licensee, and Newark shall be fully responsible therefor. Nothing herein contained shall be construed to grant any license under said patents to any wholly owned subsidiary of Newark, or to authorize the sale of plasterboard having a metallized surface embodying the inventions disclosed and claimed in any of said patents to or by any such subsidiary, without the written consent of Gypsum thereto first had and obtained.

9681 In witness whereof, the parties hereto have caused these presents to be signed by their respective Presidents, attested by their respective Secretaries, and their corporate seals to be hereunto affixed, in duplicate, the day and year first above written.

UNITED STATES GYPSUM COMPANY

By W. T. KEADY

Vice President.

ATTEST:

C. H. THAVER, *Secretary.*

NEWARK PLASTER COMPANY

By FREDERICK TOMKINS

Its President.

ATTEST:

O. N. MILES, *Secretary.*

9682 *Government's Exhibit No. 26*

Agreement made this 8th day of June, 1936, by and between United States Gypsum Company, an Illinois corporation, having its principal office and place of business at Chicago, Illinois, hereinafter referred to as "Licensor", and Certain-Teed Products Corp., a Maryland corporation, having its principal office and place of business

at New York, N. Y., hereinafter referred to as "Licensee"; witnesseth:

Whereas, Licensor is the owner of Letters Patent of the United States No. 1,938,354, relating to a plasterboard lath particularly adapted for the fire-resistant wall and ceiling constructions and structures, covered by the claims of said patent, and Licensee desires to be licensed to manufacture, use and sell such patented plasterboard lath;

Now, therefore, in consideration of the sum of One Dollar ($1.00) in hand paid, each to the other, the receipt whereof is hereby acknowledged, and of the mutual covenants herein contained, the parties hereto agree as follows:

1. Licensor hereby grants to Licensee, subject to the terms and conditions hereinafter set forth, an indivisible and non-exclusive right, license and privilege of manufacturing at the plants and factories now or hereafter owned by Licensee or any of its wholly owned subsidiaries, perforated plasterboard lath having a gypsum core and paper covering adhering thereto embodying the inventions and improvements set forth and claimed in said Letters Patent of the United States No. 1,938,354, and of selling and using, in the United States of America and the territories and possessions thereof, said perforated plasterboard lath manufactured by Licensee at its said plants and factories, or the said plants or factories of its subsidiaries, for the full term of said Letters Patent and any extensions
9683 or reissues thereof, subject, however, to cancelation or termination as hereinafter provided.

2. The license above granted, to manufacture, use and sell perforated plasterboard lath embodying the inventions and improvements of said Letters Patent, is granted on condition that Licensor reserves the right to determine, change and/or withdraw at any time and from time to time, during the term of this agreement, the minimum price or prices and/or terms and conditions of sale at which Licensee shall sell or offer for sale any such perforated plasterboard lath, and in case Licensor shall exercise the right so reserved, it shall first serve upon Licensee written notice of such minimum price or prices and/or terms and conditions of sale, and shall thereafter give to Licensee written or telegraphic notice of any change or changes in or withdrawal of such price or prices and/or terms and conditions of sale; and Licensee expressly covenants and agrees that after notice of any such price or prices and/or terms and conditions of sale or any change therein, it will not, directly or indirectly, sell or offer for

sale any such perforated plasterboard lath at a price or prices less than those, or upon terms and conditions of sale other than as, stated by Licensor in such written notice or any such written or telegraphic notice of a change in such price or prices and/or terms and conditions of sale. Such minimum price or prices and/or terms and conditions of sale so determined by Licensor and any change or changes therein may be with respect to any one or more, or all, classes of trade, markets, or methods of shipment or delivery, and may be the same or different with respect to different classes of trade, markets, or methods of shipment or delivery, all as may be determined from time to time by Licensor. All orders, contracts or commitments for future sale or delivery of any such perforated plasterboard lath shall be made subject to change in such minimum price or prices and/or terms and conditions of sale as above provided, and no shipments thereof may be made at less
9684 than the minimum price or prices or upon terms and conditions of sale other than as, contained in the last such notice of minimum price or prices and/or terms and conditions of sale, and the last notice of change or changes therein, received before shipment.

Said minimum price or prices shall not be more than that price, nor shall such terms and conditions of sale be other than those, at which Licensor determines to sell such perforated plasterboard lath embodying the inventions and improvements set forth and claimed in said Letters Patent, to its own like trade in the same market.

3. Notwithstanding any other provisions of this agreement, it is a condition and limitation of the licenses above granted that Licensee may not sell any of said perforated plasterboard lath to other manufacturers, jobbers or wholesalers without the written consent of Licensor, and then only at the minimum price or prices fixed and determined by Licensor therefor, as provided in Section 2 hereof; that Licensee shall not deliver any of said perforated plasterboard lath to any person or company on consignment; and that Licensee may not use or sell any of said perforated plasterboard lath of inferior manufacture and commonly known as "seconds".

4. All such perforated plasterboard lath shall be plainly marked by Licensee, "Licensed under United States Letters Patent No. 1,938,354."

5. As consideration for the grant of the aforesaid rights, licenses and privileges, Licensee agrees to pay to Licensor a royalty or license fee at the rate of ten cents (10¢) per thousand square feet of all of said perforated plasterboard lath sold or used by Licensee during the term of this agreement, which shall be paid monthly to Licensor on or before the 20th day of each calendar month for all of said perforated plasterboard lath sold or used by Licensee during the next preceding calendar month, as hereinafter more specifically set forth.

9685 For the purpose of this section of this agreement, all perforated plasterboard lath manufactured by Licensee and sold for erection in said patented wall and ceiling constructions and structures shall be conclusively treated as perforated plasterboard lath manufactured in accordance with the claims of said patent; and all perforated plasterboard lath shall be considered sold on the date shipped or delivered to purchaser, whether or not title passes at the time of shipment or delivery.

The royalties or license fees payable by Licensee under this license shall be in addition to any royalties or license fees payable by Licensee for any license under any other patents which may have been granted heretofore by Licensor to Licensee.

6. Licensee agrees to keep separate, full and accurate books of account and records showing the exact quantity of all of said perforated plasterboard lath manufactured, sold or used by it, and agrees that on or before the 20th day of each calendar month it will render unto Licensor true written returns, verified under oath by an officer or other agent of Licensee, setting forth the quantity of all of said perforated plasterboard lath manufactured, sold or used by it during the preceding calendar month, together with the price or prices at which the same was sold, such returns to be delivered to Licensor at its office in Chicago, Illinois, and Licensee agrees to pay to Licensor on or before the 20th day of each calendar month, at the office of Licensor at Chicago, Illinois, the hereinbefore stipulated royalties or license fees which may then be due under this agreement on account of all of said perforated plasterboard lath sold or used by it during the next preceding calendar month.

7. Licensor or its duly authorized representative shall have the right at all reasonable times during business hours to inspect such books of account and records of Licensee

as are necessary to determine the quantity of such perforated plasterboard lath manufactured, sold or used
9686 by it, the price or prices at which the same was sold, and to make copies thereof and memoranda therefrom; provided, however, that if at the time of any such examination Licensee shall request it in writing, then such examination shall be made by a certified public accountant agreed upon between the parties hereto, in which event the expense thereof shall be borne by Licensee. If the parties at any such time shall not agree upon a certified public accountant to make such examination, then Licensor shall name three certified public accountants of good standing, not directly or indirectly employed by it or in any other way connected with it, and Licensee shall have the right to select which of them shall make such examination, and if Licensee shall not accept any of them within ten (10) days after receiving the names thereof from Licensor, then Licensor shall have the right to make such examination itself.

8. As one of the considerations of this agreement, Licensee hereby acknowledges the validity of Letters Patent of the United States No. 1,938,354, and agrees that it will not, during the existence of this agreement, directly or indirectly, either alone or through or together with another or others, contest the validity of such Letters Patent or any of the claims thereof, or the title thereto of Licensor. The granting of the license herein contained shall not be construed or deemed to grant to Licensee any license under any other letters patent owned by Licensor or under which it is licensed with a right to license others. Nothing herein contained shall be construed to permit Licensee to use, at any time, any of Licensor's trade marks or names.

9. In the event either party hereto shall at any time neglect, fail or refuse to keep or perform any of the conditions or agreements herein to be kept or performed by it, then the other party may at its election serve upon the party claimed to be in default shall not have cured all this agreement, which notice shall specify the ne-
9687 glect, failure or refusal, and if within thirty (30) days from the date of delivery of said notice the party claimed to be in default, notice of termination of the defaults specified in said notice, then this agreement shall terminate without the necessity of any other or further notice and without the necessity of any court action; provided, however, that neither party shall be relieved

thereby of any liability accrued at the time of such termination. A waiver by either party hereto of any breach by the other party shall not be deemed or construed to be a waiver of any other or subsequent breach or breaches hereof.

10. In case at any time Licensee shall be adjudged bankrupt or insolvent, or a receiver appointed for its assets and business, or its assets assigned for the benefit of creditors, then Licensor may at its option cancel this agreement with or without notice, but in any such event Licensor shall not thereby be prevented from collecting any and all license fees or royalties accrued hereunder at the time of such termination.

11. In the event Licensor grants to any other person, firm or corporation, a license similar to this license under said letters patent to manufacture, use and sell said perforated plasterboard lath under more favorable terms or conditions than stated herein, Licensor shall immediately give notice thereof to Licensee, and grant to Licensee a license on such terms and conditions, or amend this agreement so as to extend such more favorable terms and conditions to Licensee during the time they are enjoyed by such other person, firm or corporation.

12. The licenses herein granted are personal to Licensee, and the same or any right therein or thereunder shall not be sold, assigned, or transferred without the written consent of Licensor first had and obtained; and if this agreement or any of Licensee's rights hereunder are transferred by operation of law, then Licensor may cancel this agreement at any time thereafter, with or without notice.

9688 13. This agreement shall continue in force and effect for the full term of said letters patent and any extensions or reissues thereof; provided, however, that the same may be canceled or terminated by either party hereto upon giving to the other of said parties one year's written notice of its intention to cancel or terminate the same. Upon the giving of such notice this contract and all of the provisions hereof, together with said license, shall, at the end of six (6) months from the end of the period stated in such notice, be and become canceled and terminated without the necessity of any further notice by either party hereto. Licensee, by reason of any such cancelation or termination, shall not be relieved from the payment of any royalties or license fees payable hereunder for all of said

patented perforated plasterboard lath sold or used by it up to the date of final cancelation or termination hereof.

14. Any and all notices required to be served hereunder upon Licensor may be served by mailing a copy thereof, postage prepaid, registered mail, addressed to Licensor at 300 West Adams Street, Chicago, Illinois; and any and all notices required to be served hereunder upon Licensee may be served by mailing a copy thereof, postage prepaid registered mail, addressed to Licensee at 100 E. 42nd St., New York, N. Y.; and such mailing of notice shall constitute proper service of notice hereunder.

15. This agreement shall be binding upon and enure to the benefit of the successors and assigns of the parties hereto; provided, however, that nothing herein contained shall be construed to permit any assignment of this agreement or of any rights hereunder except as hereinabove specifically provided.

In witness whereof, the parties hereto have hereunto caused these presents to be signed on their behalf by their respective presidents, attested by their respective
9689 secretaries, and their corporate seals hereunto affixed, all done the day and year first above written.

UNITED STATES GYPSUM COMPANY.

By C. F. HENNING, *Vice-President.*

ATTEST:

C. H. THAVER, *Secretary.*

CERTAIN-TEED PRODUCTS CORP.

By CHESTER E. RAHR, *President.*

ATTEST:

Secretary

9690 *Government's Exhibit No. 27*

UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

SEPTEMBER 16, 1938.

CERTAIN-TEED PRODUCTS CORPORATION
100 East Forty-second Street,
New York, N. Y.

GENTLEMEN: In view of the fact that perforated plasterboard lath, which also embodies the claims of the patents contained in our original board license, has attained such

importance and constitutes a large volume of the board manufactured and sold thereunder, we have decided to grant to you as one of our board licensees the right to use our U. S. Letters Patent No. 1,938,354 in the manufacture and sale of plasterboard without the payment of additional royalties or license fees, the same as if such patent were listed in Exhibit A of our original board license, upon the terms and conditions hereinafter set forth.

You are herefore granted an indivisible and nonexclusive license to manufacture at your plants perforated plasterboard lath having a gypsum core and paper covering adhering thereto, embodying the claims of Letters Patent of the United States No. 1,938,354 and of selling and using the same in the United States of America and the territories and possessions thereof, subject to the terms and conditions hereinafter set forth.

It is understood that nothing herein contained shall give you the right to use any of our other patents, or change or alter in any way the terms of your original board license agreement of October 15, 1929, it being understood that your only right to manufacture and sell gypsum plasterboard and/or gypsum wallboard, including perforated plasterboard lath, embodying the claims of any of the patents set forth and described in Exhibit A of your said original board license agreement is under and in accordance with the terms and conditions of said last mentioned agreement.

It is of course understood that all perforated plasterboard lath manufactured and sold by you shall be included in computing your royalties or license fees under your said original board license agreement and you will make reports of your manufacture and sale thereof and we shall have the right to inspect books of account and records, in the same manner and to the same extent as set forth in said original board license agreement.

9691 You are not to manufacture any of said lath for or to sell the same to another manufacturer or to any manufacturer or distributor selling plaster or gypsum products as a manufacturer, or to deliver any of said lath to any person or company on consignment, or to sell any of the same of inferior manufacture, commonly known as "seconds".

You will mark all such patented lath "Licensed under United States Letters Patent No. 1,938,354".

You will not assign this license without our written consent, nor shall the same or any right hereunder be transferred by operation of law or otherwise.

This license may be cancelled or terminated by either party hereto upon giving to the other party hereto one (1) year's written notice of cancellation or termination thereof. Any such notice shall become effective upon depositing the same in the United States mails, postage prepaid and registered, addressed to you at your principal office in New York, New York, or to us at our principal office, 300 West Adams Street, Chicago, Illinois.

Your perforated plasterboard lath license agreement dated June 8, 1936, shall become cancelled and terminated upon the acceptance of this letter by you, provided, however, that neither party shall thereby be relieved of any liability thereunder accrued prior to September 1, 1938.

This license shall become effective as of September 1, 1938, when accepted by you in writing.

If satisfactory, please sign the duplicate copy of this letter indicating your acceptance thereof and return the same to us.

Yours very truly,

UNITED STATES GYPSUM COMPANY,

O. M. KNODE, *President.*

Accepted, this 4th day of October, 1938.

CERTAIN-TEED PRODUCTS CORPORATION.

By AUDENREID WHITTEMORE
Executive Vice President.

9692 *Government's Exhibit No. 28*

Agreement made this 2nd day of February, 1937, by and between United States Gypsum Company, an Illinois corporation, having its principal office and place of business at Chicago, Illinois, hereinafter referred to as "Licensor", and Ebsary Gypsum Company, Inc., a New York corporation, having its principal office and place of business at 52 Vanderbilt Ave., New York, N. Y., hereinafter referred to as "Licensee";

Witnesseth:

Whereas, Licensor is the owner of Letters Patent of the United States No. 1,938,354, relating to a plasterboard lath particularly adapted for the fire-resistant wall and ceiling constructions and structures, covered by the claims of said patent, and Licensee desires to be licensed to manufacture, use and sell such patented plasterboard lath;

Now, therefore, in consideration of the sum of one Dollar ($1.00) in hand paid, each to the other, the receipt whereof is hereby acknowledged, and of the mutual covenants herein contained, the parties hereto agree as follows:

1. Licensor hereby grants to Licensee, subject to the terms and conditions hereinafter set forth, an indivisible and non-exclusive right, license and privilege of manufacturing at the plants and factories now or hereafter owned by Licensee or any of its wholly owned subsidiaries, perforated plasterboard lath having a gypsum core and paper covering adhering thereto embodying the inventions and improvements set forth and claimed in said Letters Patent of the United States No. 1,938,354, and of selling and using, in the United States of America and the territories and possessions thereof, said perforated plasterboard lath manufactured by Licensee at its said plants and factories, or the said plants or factories of its subsidiaries, for the full term of said Letters Patent and any extensions or
9693 reissues thereof, subject, however, to cancelation or termination as hereinafter provided.

2. The license above granted, to manufacture, use and sell perforated plasterboard lath embodying the inventions and improvements of said Letters Patent, is granted on condition that Licensor reserves the right to determine, change and/or withdraw at any time and from time to time, during the term of this agreement, the minimum price or prices and/or terms and conditions of sale at which Licensee shall sell or offer for sale any such perforated plasterboard lath, and in case Licensor shall exercise the right so reserved, it shall first serve upon Licensee written notice of such minimum price or prices and/or terms and conditions of sale, and shall thereafter give to Licensee written or telegraphic notice of any change or changes in or withdrawal of such price or prices and/or terms and conditions of sale; and Licensee expressly covenants and agrees that after notice of any such price or prices and/or terms and

conditions of sale or any change therein, it will not, directly or indirectly, sell or offer for sale any such perforated plasterboard lath at a price or prices less than those, or upon terms and conditions of sale other than as, stated by Licensor in such written notice or any such written or telegraphic notice of a change in such price or prices and/or terms and conditions of sale. Such minimum price or prices and/or terms and conditions of sale so determined by Licensor and any change or changes therein may be with respect to any one or more, or all, classes of trade, markets, or methods of shipment or delivery, and may be the same or different with respect to different classes of trade, markets, or methods of shipment or delivery, all as may be determined from time to time by Licensor. All orders, contracts or commitments for future sale or delivery of any such perforated plasterboard lath shall be made subject to change in such minimum price or prices
9694 and/or terms and conditions of sale as above provided, and no shipments thereof may be made at less than the minimum price or prices or upon terms and conditions of sale other than as, contained in the last such notice of minimum price or prices and/or terms and conditions of sale, and the last notice of change or changes therein, received before shipment.

Said minimum price or prices shall not be more than that price, nor shall such terms and conditions of sale be other than those, at which Licensor determines to sell such perforated plasterboard lath embodying the inventions and improvements set forth and claimed in said Letters Patent, to its own like trade in the same market.

3. Notwithstanding any other provisions of this agreement, it is a condition and limitation of the licenses above granted that Licensee may not sell any of said perforated plasterboard lath to other manufacturers, jobbers or wholesalers without the written consent of Licensor, and then only at the minimum price or prices fixed and determined by Licensor therefor, as provided in Section 2 hereof; that Licensee shall not deliver any of said perforated plasterboard lath to any person or company on consignment; and that Licensee may not use or sell any of said perforated plasterboard lath of inferior manufacture and commonly known as "seconds".

4. All such perforated plasterboard lath shall be plainly marked by Licensee, "Licensed under United States Letters Patent No. 1,938,354."

5. As consideration for the grant of the aforesaid rights, licenses and privileges, Licensee agrees to pay to Licensor a royalty or license fee at the rate of ten cents (10¢) per thousand square feet of all of said perforated plasterboard lath sold or used by Licensee during the term of this agreement, which shall be paid monthly to Licensor on or
9695 before the 20th day of each calendar month for all of said perforated plasterboard lath sold or used by Licensee during the next preceding calendar month, as hereinafter more specifically set forth.

For the purpose of this section of this agreement, all perforated plasterboard lath manufactured by Licensee and sold for erection in said patented wall and ceiling constructions and structures shall be conclusively treated as perforated plasterboard lath manufactured in accordance with the claims of said patent; and all perforated plasterboard lath shall be considered sold on the date shipped or delivered to purchaser, whether or not title passes at the time of shipment or delivery.

The royalties or license fees payable by Licensee under this license shall be in addition to any royalties or license fees payable by Licensee for any license under any other patents which may have been granted heretofore by Licensor to Licensee.

6. Licensee agrees to keep separate, full and accurate books of account and records showing the exact quantity of all of said perforated plasterboard lath manufactured, sold or used by it, and agrees that on or before the 20th day of each calendar month it will render unto Licensor true written returns, verified under oath by an officer or other agent of Licensee, setting forth the quantity of all of said perforated plasterboard lath manufactured, sold or used by it during the preceding calendar month, together with the price or prices at which the same was sold, such returns to be delivered to Licensor at its office in Chicago, Illinois, and Licensee agrees to pay to Licensor on or before the 20th day of each calendar month, at the office of Licensor at Chicago, Illinois, the hereinbefore stipulated royalties or license fees which may then be due under this agreement on account of all of said perforated plas-
9696 terboard lath sold or used by it during the next preceding calendar month.

7. Licensor or its duly authorized representative shall have the right at all reasonable times during business hours

to inspect such books of account and records of Licensee as are necessary to determine the quantity of such perforated plasterboard lath manufactured, sold or used by it, the price or prices at which the same was sold, and to make copies thereof and memoranda therefrom; provided, however, that if at the time of any such examination Licensee shall request it in writing, then such examination shall be made by a certified public accountant agreed upon between the parties hereto, in which event the expense thereof shall be borne by Licensee. If the parties at any such time shall not agree upon a certified public accountant to make such examination, then Licensor shall name three certified public accountants of good standing, not directly or indirectly employed by it or in any other way connected with it, and Licensee shall have the right to select which of them shall make such examination, and if Licensee shall not accept any of them within ten (10) days after receiving the names thereof from Licensor, then Licensor shall have the right to make such examination itself.

8. As one of the considerations of this agreement, Licensee hereby acknowledges the validity of Letters Patent of the United States No. 1,938,354, and agrees that it will not, during the existence of this agreement, directly or indirectly, either alone or through or together with another or others, contest the validity of such Letters Patent or any of the claims thereof, or the title thereto of Licensor. The granting of the license herein contained shall not be construed or deemed to grant to Licensee any license under any other letters patent owned by Licensor or under which it is licensed with a right to license others. Nothing herein contained shall be construed to permit Licensee to
9697 use, at any time, any of Licensor's trade marks or names.

9. In the event either party hereto shall at any time neglect, fail or refuse to keep or perform any of the conditions or agreements herein to be kept or performed by it, then the other party may at its election serve upon the party claimed to be in default, notice of termination of this agreement, which notice shall specify the neglect, failure or refusal, and if within thirty (30) days from the date of delivery of said notice the party claimed to be in default shall not have cured all the defaults specified in said notice, then this agreement shall terminate without the necessity of any other or further notice and without the necessity of

any court action; provided, however, that neither party shall be relieved thereby of any liability accrued at the time of such termination. A waiver by either party hereto of any breach by the other party shall not be deemed or construed to be a waiver of any other or subsequent breach or breaches hereof.

10. In case at any time Licensee shall be adjudged bankrupt or insolvent, or a receiver appointed for its assets and business, or its assets assigned for the benefit of creditors, then Licensor may at its option cancel this agreement with or without notice, but in any such event Licensor shall not thereby be prevented from collecting any and all license fees or royalties accrued hereunder at the time of such termination.

11. In the event Licensor grants to any other person, firm or corporation, a license similar to this license under said letters patent to manufacture, use and sell said perforated plasterboard lath under more favorable terms or conditions than stated herein, Licensor shall immediately give notice thereof to Licensee, and grant to Licensee a license on such terms and conditions, or amend this agreement so as to extend such more favorable terms and
9698 conditions to Licensee during the time they are enjoyed by such other person, firm or corporation.

12. The licenses herein granted are personal to Licensee, and the same or any right therein or thereunder shall not be sold, assigned, or transferred without the written consent of Licensor first had and obtained; and if this agreement or any of Licensee's rights hereunder are transferred by operation of law, then Licensor may cancel this agreement at any time thereafter, with or without notice.

13. This agreement shall continue in force and effect for the full term of said letters patent and any extensions or reissues thereof; provided, however, that the same may be canceled or terminated by either party hereto upon giving to the other of said parties one year's written notice of its intention to cancel or terminate the same. Upon the giving of such notice this contract and all of the provisions hereof, together with said license, shall, at the end of six (6) months from the end of the period stated in such notice, be and become canceled and terminated without the necessity of any further notice by either party hereto. Licensee, by reason of any such cancelation or termination, shall not

be relieved from the payment of any royalties or license fees payable hereunder for all of said patented perforated plasterboard lath sold or used by it up to the date of final cancelation or termination hereof.

14. Any and all notices required to be served hereunder upon Licensor may be served by mailing a copy thereof, postage prepaid, registered mail, addressed to Licensor at 300 West Adams Street, Chicago, Illinois; and any and all notices required to be served hereunder upon Licensee may be served by mailing a copy thereof, postage prepaid, registered mail, addressed to Licensee at 52 Vanderbilt Ave., New York, N. Y.; and such mailing of notice shall constitute proper service of notice hereunder.

9699 15. This agreement shall be binding upon and enure to the benefit of the successors and assigns of the parties hereto; provided, however, that nothing herein contained shall be construed to permit any assignment of this agreement or of any rights hereunder except as hereinabove specifically provided.

In witness whereof, the parties hereto have hereunto caused these presents to be signed on their behalf by their respective presidents, attested by their respective secretaries, and their corporate seals hereunto affixed, all done the day and year first above written.

UNITED STATES GYPSUM COMPANY,

By W. L. KEADY, *Vice-President.*

By O. M. KNODE, *President.*

ATTEST:

N. O. LANG, *Ass't Secretary.*

EBSARY GYPSUM COMPANY, INC.

By F. G. EBSARY, *President.*

ATTEST:

FRANK W. ALLEN, *Secretary.*

9700 *Government's Exhibit No. 29*

UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

SEPTEMBER 16, 1938.

EBSARY GYPSUM COMPANY, INC.
52 Vanderbilt Avenue,
New York, New York

GENTLEMEN: In view of the fact that perforated plasterboard lath, which also embodies the claims of the patents contained in our original board license, has attained such importance and constitutes a large volume of the board manufactured and sold thereunder, we have decided to grant to you as one of our board licensees the right to use our U. S. Letters Patent No. 1,938,354 in the manufacture and sale of plasterboard without the payment of additional royalties or license fees, the same as if such patent were listed in Exhibit A of our original board license, upon the terms and conditions hereinafter set forth.

You are therefore granted an indivisible and nonexclusive license to manufacture at your plants perforated plasterboard lath having a gypsum core and paper covering adhering thereto, embodying the claims of Letters Patent of the United States No. 1,938,354 and of selling and using the same in the United States of America and the territories and possessions thereof, subject to the terms and conditions hereinafter set forth.

It is understood that nothing herein contained shall give you the right to use any of our other patents, or change or alter in any way the terms of your original board license agreement of October 18, 1929, it being understood that your only right to manufacture and sell gypsum plasterboard and/or gypsum wallboard, including preforated plasterboard lath, embodying the claims of any of the patents set forth and described in Exhibit A of your said original board license agreement is under and in accordance with the terms and conditions of said last mentioned agreement.

It is of course understood that all perforated plasterboard lath manufactured and sold by you shall be included in computing your royalties or license fees under your said original board license agreement and you will make reports of your manufacture and sale thereof and we shall have

the right to inspect books of account and records, in the same manner and to the same extent as set forth in said original board license agreement.

9701 You are not to manufacture any of said lath for or to sell the same to another manufacturer or to any manufacturer or distributor selling plaster or gypsum products as a manufacturer, or to deliver any of said lath to any person or company on consignment, or to sell any of the same of inferior manufacture, commonly known as "seconds".

You will mark all such patented lath "Licensed under United States Letters Patent No. 1,938,354".

You will not assign this license without our written consent, nor shall the same or any right hereunder be transferred by operation of law or otherwise.

This license may be cancelled or terminated by either party hereto upon giving to the other party hereto one (1) year's written notice of cancellation or termination thereof. Any such notice shall become effective upon depositing the same in the United States mails, postage prepaid and registered, addressed to you at your principal office in New York, New York, or to us at our principal office, 300 West Adams Street, Chicago, Illinois.

Your perforated plasterboard lath license agreement dated February 2, 1937, shall become cancelled and terminated upon the acceptance of this letter by you, provided, however, that neither party shall thereby be relieved of any liability thereunder accrued prior to September 1, 1938.

This license shall become effective as of September 1, 1938, when accepted by you in writing.

If satisfactory, please sign the duplicate copy of this letter indicating your acceptance thereof and return the same to us.

Yours very truly,

UNITED STATES GYPSUM COMPANY,

O. M. KNODE, *President.*

Accepted, this 10th day of
January, 1939.

ERSARY GYPSUM COMPANY; INC.,

By GEORGE N. LENCI

V. P.

9702 *Government's Exhibit No. 30*

Agreement made this 10th day of July 1936, by and between United States Gypsum Company, an Illinois corporation, having its principal office and place of business at Chicago, Illinois, hereinafter referred to as "Licensor", and The American Gypsum Co., an Ohio corporation having its principal office and place of business at Port Clinton, Ohio hereinafter referred to as "Licensee"; witnesseth:

Whereas, Licensor is the owner of Letters Patent of the United States No. 1,938,354, relating to a plasterboard lath particularly adapted for the fire-resistant wall and ceiling constructions and structures, covered by the claims of said patent, and Licensee desires to be licensed to manufacture, use and sell such patented plasterboard lath;

Now, therefore, in consideration of the sum of One Dollar ($1.00) in hand paid, each to the other, the receipt whereof is hereby acknowledged, and of the mutual covenants herein contained, the parties hereto agree as follows:

1. Licensor hereby grants to Licensee, subject to the terms and conditions hereinafter set forth, an indivisible and non-exclusive right, license and privilege of manufacturing at the plants and factories now or hereafter owned by Licensee or any of its wholly owned subsidiaries, perforated plasterboard lath having a gypsum core and paper covering adhering thereto embodying the inventions and improvements set forth and claimed in said Letters Patent of the United States No. 1,938,354, and of selling and using, in the United States of America and the territories and possessions thereof, said perforated plasterboard lath manufactured by Licensee at its said plants and factories, or the said plants or factories of its subsidiaries, for the full term of said Letters Patent and any extensions or
9703 reissues thereof, subject, however, to cancelation or termination as hereinafter provided.

2. The license above granted, to manufacture, use and sell perforated plasterboard lath embodying the inventions and improvements of said Letters Patent, is granted on condition that Licensor reserves the right to determine, change and/or withdraw at any time and from time to time, during the term of this agreement, the minimum price or prices and/or terms and conditions of sale at which Licensee shall

sell or offer for sale any such perforated plasterboard lath, and in case Licensor shall exercise the right so reserved, it shall first serve upon Licensee written notice of such minimum price or prices and/or terms and conditions of sale, and shall thereafter give to Licensee written or telegraphic notice of any change or changes in or withdrawal of such price or prices and/or terms and conditions of sale; and Licensee expressly covenants and agrees that after notice of any such price or prices and/or terms and conditions of sale or any change therein, it will not, directly or indirectly, sell or offer for sale any such perforated plasterboard lath at a price or prices less than those, or upon terms and conditions of sale other than as, stated by Licensor in such written notice or any such written or telegraphic notice of a change in such price or prices and/or terms and conditions of sale. Such minimum price or prices and/or terms and conditions of sale so determined by Licensor and any change or changes therein may be with respect to any one or more, or all, classes of trade, markets, or methods of shipment or delivery, and may be the same or different with respect to different classes of trade, markets, or methods of shipment or delivery, all as may be determined from time to time by Licensor. All orders, contracts or commitments for future sale or delivery of any such perforated plasterboard lath shall be made subject to change in such minimum price or prices and/or terms and conditions of sale as above provided, and no shipments thereof may be made at less than the minimum price or prices or upon terms and conditions of sale other than as, contained in the last such notice of minimum price or prices and/or terms and conditions of sale, and the last notice of change or changes therein, received before shipment.

9704

Said minimum price or prices shall not be more than that price, nor shall such terms and conditions of sale be other than those, at which Licensor determines to sell such perforated plasterboard lath embodying the inventions and improvements set forth and claimed in said Letters Patent, to its own like trade in the same market.

3. Notwithstanding any other provisions of this agreement, it is a condition and limitation of the licenses above granted that Licensee may not sell any of said perforated plasterboard lath to other manufacturers, jobbers or wholesalers without the written consent of Licensor, and then

only at the minimum price or prices fixed and determined by Licensor therefor, as provided in Section 2 hereof; that Licensee shall not deliver any of said perforated plasterboard lath to any person or company on consignment; and that Licensee may not use or sell any of said perperforated plasterboard lath of inferior manufacture and commonly known as "seconds".

4. All such perforated plasterboard lath shall be plainly marked by Licensee, "Licensed under United States Letters Patent No. 1,938,354."

5. As consideration for the grant of the aforesaid rights, licenses and privileges, Licensee agrees to pay to Licensor a royalty or license fee at the rate of ten cents (10¢) per thousand square feet of all of said perforated plasterboard lath sold or used by Licensee during the term of this agreement, which shall be paid monthly to Licensor on
9705 or before the 20th day of each calendar month for all of said perforated plasterboard lath sold or used by Licensee during the next-preceding calendar month, as hereinafter more specifically set forth.

For the purpose of this section of this agreement, all perforated plasterboard lath manufactured by Licensee and sold for erection in said patented wall and ceiling constructions and structures shall be conclusively treated as perforated plasterboard lath manufactured in accordance with the claims of said patent; and all perforated plasterboard lath shall be considered sold on the date shipped or delivered to purchaser, whether or not title passes at the time of shipment or delivery.

The royalties or license fees payable by Licensee under this license shall be in addition to any royalties or license fees payable by Licensee for any license under any other patents which may have been granted heretofore by Licensor to Licensee.

6. Licensee agrees to keep separate, full and accurate books of account and records showing the exact quantity of all of said perforated plasterboard lath manufactured, sold or used by it, and agrees that on or before the 20th day of each calendar month it will render unto Licensor true written returns, verified under oath by an officer or other agent of Licensee, setting forth the quantity of all of said perforated plasterboard lath manufactured, sold or used by it during the preceding calendar month, together with the price or prices at which the same was sold, such re-

turns to be delivered to Licensor at its office in Chicago, Illinois, and Licensee agrees to pay to Licensor on or before the 20th day of each calendar month, at the office of Licensor at Chicago, Illinois, the hereinbefore stipulated royalties or license fees which may then be due under this agreement on account of all of said perforated plasterboard lath sold or used by it during the next preceding calendar
9706 month.

7. Licensor or its duly authorized representative shall have the right at all reasonable times during business hours to inspect such books of account and records of Licensee as are necessary to determine the quantity of such perforated plasterboard lath manufactured, sold or used by it, the price or prices at which the same was sold, and to make copies thereof and memoranda therefrom; provided, however, that if at the time of any such examination Licensee shall request it in writing, then such examination shall be made by a certified public accountant agreed upon between the parties hereto, in which event the expense thereof shall be borne by Licensee. If the parties at any such time shall not agree upon a certified public accountant to make such examination, then Licensor shall name three certified public accountants of good standing, not directly or indirectly employed by it or in any other way connected with it, and Licensee shall have the right to select which of them shall make such examination, and if Licensee shall not accept any of them within ten (10) days after receiving the names thereof from Licensor, then Licensor shall have the right to make such examination itself.

8. As one of the considerations of this agreement, Licensee hereby acknowledges the validity of Letters Patent of the United States No. 1,938,354, and agrees that it will not, during the existence of this agreement, directly or indirectly, either alone or through or together with another or others, contest the validity of such Letters Patent or any of the claims thereof, or the title thereto of Licensor. The granting of the license herein contained shall not be construed or deemed to grant to Licensee any license under any other letters patent owned by Licensor or under which it is licensed with a right to license others. Nothing herein contained shall be construed to permit Licensee
9707 to use, at any time, any of Licensor's trade marks or names.

9. In the event either party hereto shall at any time neglect, fail or refuse to keep or perform any of the conditions or agreements herein to be kept or performed by it, then the other party may at its election serve upon the party claimed to be in default, notice of termination of this agreement, which notice shall specify the neglect, failure or refusal, and if within thirty (30) days from the date of delivery of said notice the party claimed to be in default shall not have cured all the defaults specified in said notice, then this agreement shall terminate without the necessity of any other or further notice and without the necessity of any court action; provided, however, that neither party shall be relieved thereby of any liability accrued at the time of such termination. A waiver by either party hereto of any breach by the other party shall not be deemed or construed to be a waiver of any other or subsequer breach or breaches hereof.

10. In case at any time Licensee shall be adjudged bankrupt or insolvent, or a receiver appointed for its assets and business, or its asetss assigned for the benefit of creditors, then Licensor may at its option cancel this agreement with or without notice, but in any such event Licensor shall not thereby be prevented from collecting any and all license fees or royalties accrued hereunder at the time of such termination.

11. In the event Licensor grants to any other person, firm or corporation, a license similar to this license under said letters patent to manufacture, use and sell said perforated plasterboard lath under more favorable terms or conditions than stated herein, Licensor shall immediately give notice thereof to Licensee, and grant to Licensee a license on such terms and conditions, or amend this agreement so as to extend such more favorable terms and
9708 conditions to Licensee during the time they are enjoyed by such other person, firm or corporation.

12. The licenses herein granted are personal to Licensee, and the same or any right therein or thereunder shall not be sold, assigned, or transferred without the written consent of Licensor first had and obtained; and if this agreement or any of Licensee's rights hereunder are transferred by operation of law, then Licensor may cancel this agreement at any time thereafter, with or without notice.

13. This agreement shall continue in force and effect for the full term of said letters patent and any extensions

or reissues thereof; provided, however, that the same may be canceled or terminated by either party hereto upon giving to the other of said parties one year's written notice of its intention to cancel or terminate the same. Upon the giving of such notice this contract and all of the provisions hereof, together with said license, shall, at the end of six (6) months from the end of the period stated in such notice, be and become canceled and terminated without the necessity of any further notice by either party hereto. Licensee, by reason of any such cancelation or termination, shall not be relieved from the payment of any royalties or license fees payable hereunder for all of said patented perforated plasterboard lath sold or used by it up to the date of final cancelation or termination hereof.

14. Any and all notices required to be served hereunder upon Licensor may be served by mailing a copy thereof, postage prepaid, registered mail, addressed to Licensor at 300 West Adams Street, Chicago, Illinois; and any and all notices required to be served hereunder upon Licensee may be served by mailing a copy thereof, postage prepaid, registered mail, addressed to Licensee at Port Clinton, Ohio; and such mailing of notice shall constitute proper service of notice hereunder.

9709 15. This agreement shall be binding upon and enure to the benefit of the successors and assigns of the parties hereto; provided, however, that nothing herein contained shall be construed to permit any assignment of this agreement or of any rights hereunder except as hereinabove specifically provided.

In witness whereof, the parties hereto have hereunto caused these presents to be signed on their behalf by their respective presidents, attested by their respective secretaries, and their corporate seals hereunto affixed, all done the day and year first above written.

UNITED STATES GYPSUM COMPANY,
By C. F. HENNING, *Vice President.*

ATTEST:

C. H. SHAVER, *Secretary.*

THE AMERICAN GYPSUM CO.
By C. J. MILLER, *President*

ATTEST:

JOHN D. VEINIG, *Secretary.*

9710 *Government's Exhibit No. 31*

Agreement made this 23d day of June 1937, by and between United States Gypsum Company, an Illinois corporation, having its principal office and place of business at Chicago, Illinois, hereinafter referred to as "Licensor", and Kelley Plasterboard Company, Inc., a New Jersey corporation, having its principal office and place of business at Delawanna, Clifton, New Jersey, hereinafter referred to as "Licensee"; witnesseth:

Whereas, Licensor is the owner of Letters Patent of the United States No. 1,938,354, relating to a plasterboard lath particularly adapted for the fire-resistant wall and ceiling constructions and structures, covered by the claims of said patent, and Licensee desires to be licensed to manufacture, use and sell such patented plasterboard lath;

Now, therefore, in consideration of the sum of One Dollar ($1.00) in hand paid, each to the other, the receipt whereof is hereby acknowledged, and of the mutual covenants herein contained, the parties hereto agree as follows:

1. Licensor hereby grants to Licensee, subject to the terms and conditions hereinafter set forth, an indivisible and non-exclusive right, license and privilege of manufacturing at the plants and factories now or hereafter owned by Licensee or any of its wholly owned subsidiaries, perforated plasterboard lath having a gypsum core and paper covering adhering thereto embodying the inventions and improvements set forth and claimed in said Letters Patent of the United States No. 1,938,354, and of selling and using, in the United States of America and the territories and possessions thereof, said perforated plasterboard lath manufactured by Licensee at its said plants and factories, or the said plants or factories of its subsidiaries, for the full term of said Letters Patent and any extensions or reissues
9711 thereof, subject, however, to cancelation or termination as hereinafter provided.

2. The license above granted, to manufacture, use and sell perforated plasterboard lath embodying the inventions and improvements of said Letters Patent, is granted on condition that Licensor reserves the right to determine, change and/or withdraw at any time and from time to time, during the term of this agreement, the minimum price or

prices and/or terms and conditions of sale at which Licensee shall sell or offer for sale any such perforated plasterboard lath, and in case Licensor shall exercise the right so reserved, it shall first serve upon Licensee written notice of such minimum price or prices and/or terms and conditions of sale, and shall thereafter give to Licensee written or telegraphic notice of any change or changes in or withdrawal of such price or prices and/or terms and conditions of sale; and Licensee expressly covenants and agrees that after notice of any such price or prices and/or terms and conditions of sale or any change therein, it will not, directly or indirectly, sell or offer for sale any such perforated plasterboard lath at a price or prices less than those, or upon terms and conditions of sale other than as, stated by Licensor in such written notice or any such written or telegraphic notice of a change in such price or prices and/or terms and conditions of sale. Such minimum price or prices and/or terms and conditions of sale so determined by Licensor and any change or changes therein may be with respect to any one or more, or all, classes of trade, markets, or methods of shipment or delivery, and may be the same or different with respect to different classes of trade, markets, or methods of shipment or delivery, all as may be determined from time to time by Licensor. All orders, contracts or commitments for future sale or delivery of any such perforated plasterboard lath shall be made subject to change in such minimum price or prices and/or terms
9712 and conditions of sale as above provided, and no shipments thereof may be made at less than the minimum price or prices or upon terms and conditions of sale other than as, contained in the last such notice of minimum price or prices and/or terms and conditions of sale, and the last notice of change or changes therein, received before shipment.

Said minimum price or prices shall not be more than that price, nor shall such terms and conditions of sale be other than those, at which Licensor determines to sell such perforated plasterboard lath embodying the inventions and improvements set forth and claimed in said Letters Patent, to its own like trade in the same market.

3. Notwithstanding any other provisions of this agreement, it is a condition and limitation of the licenses above

granted that Licensee may not sell any of said perforated plasterboard lath to other manufacturers, jobbers or wholesalers without the written consent of Licensor, and then only at the minimum price or prices fixed and determined by Licensor therefor, as provided in Section 2 hereof; that Licensee shall not deliver any of said perforated plasterboard lath to any person or company on consignment; and that Licensee may not use or sell any of said perforated plasterboard lath of inferior manufacture and commonly known as "seconds".

4. All such perforated plasterboard lath shall be plainly marked by Licensee, "Licensed under United States Letters Patent No. 1,938,354."

5. As consideration for the grant of the aforesaid rights, licenses and privileges, Licensee agrees to pay to Licensor a royalty or license fee at the rate of ten cents (10¢) per thousand square feet of all of said perforated plasterboard lath sold or used by Licensee during the term of this agreement, which shall be paid monthly to Licensor on or
9713 before the 20th day of each calendar month for all of said perforated plasterboard lath sold or used by Licensee during the next preceding calendar month, as hereinafter more specifically set forth.

For the purpose of this section of this agreement, all perforated plasterboard lath manufactured by Licensee and sold for erection in said patented wall and ceiling constructions and structures shall be conclusively treated as perforated plasterboard lath manufactured in accordance with the claims of said patent; and all perforated plasterboard lath shall be considered sold on the date shipped or delivered to purchaser, whether or not title passes at the time of shipment or delivery.

The royalties or license fees payable by Licensee under this license shall be in addition to any royalties or license fees payable by Licensee for any license under any other patents which may have been granted heretofore by Licensor to Licensee.

6. Licensee agrees to keep separate, full and accurate books of account and records showing the exact quantity of all of said perforated plasterboard lath manufactured, sold or used by it, and agrees that on or before the 20th day of each calendar mnoth it will render unto Licensor true written returns, verified under oath by an officer or other agent

of Licensee, setting forth the quantity of all of said perforated plasterboard lath manufactured, sold or used by it during the preceding calendar month, together with the price or prices at which the same was sold, such returns to be delivered to Licensor at its office in Chicago, Illinois, and Licensee agrees to pay to Licensor on or before the 20th day of each calendar month, at the office of Licensor at Chicago Illinois, the hereinbefore stipulated royalties or license fees which may then be due under this agreement on account of all of said perforated plasterboard lath sold or
9714 used by it during the next preceding calendar month.

7. Licensor or its duly authorized representative shall have the right at all reasonable times during business hours to inspect such books of account and records of Licensee as are necessary to determine the quantity of such perforated plasterboard lath manufactured, sold or used by it, the price or prices at which the same was sold, and to make copies thereof and memoranda therefrom; provided, however, that if at the time of any such examination Licensee shall request it in writing, then such examination shall be made by a certified public accountant agreed upon between the parties hereto, in which event the expense thereof shall be borne by Licensee. If the parties at any such time shall not agree upon a certified public accountant to make such examination, then Licensor shall name three certified public accountants of good standing, not directly or indirectly employed by it or in any other way connected with it, and Licensee shall have the right to select which of them shall make such examination, and if Licensee shall not accept any of them within ten (10) days after receiving the names thereof from Licensor, then Licensor shall have the right to make such examination itself.

8. As one of the considerations of this agreement, Licensee hereby acknowledges the validity of Letters Patent of the United States No. 1,938,354, and agrees that it will not, during the existence of this agreement, directly or indirectly, either alone or through or together with another or others, contest the validity of such Letters Patent or any of the claims thereof, or the title thereto of Licensor. The granting of the license herein contained shall not be construed or deemed to grant to Licensee any license under any other letters patent owned by Licensor or under which it is licensed with a right to license others. Nothing herein con-

tained shall be construed to permit Licensee to use,
9715 at any time, any of Licensor's trade marks or names.

9. In the event either party hereto shall at any time neglect, fail or refuse to keep or perform any of the conditions or agreements herein to be kept or performed by it, then the other party may at its election serve upon the party—imed to be in default, notice or termination of this agreement, which notice shall specify the neglect, failure or refusal, and if within thirty (30) days from the date of delivery of said notice the party claimed to be in default shall not have cured all the defaults specified in said notice, then this agreement shall terminate without the necessity of any other or further notice and without the necessity of any court action; provided, however, that neither party shall be relieved thereby of any liability accrued at the time of such termination. A waiver by either party hereto of any breach by the other party shall not be deemed or construed to be a waiver of any other or subsequent breach or breaches hereof.

10. In case at any time Licensee shall be adjudged bankrupt or insolvent, or a receiver appointed for its assets and business, or its assets assigned for the benefit of creditors, then Licensor may at its option cancel this agreement with or without notice, but in any such event Licensor shall not thereby be prevented from collecting any and all license fees or royalties accrued hereunder at the time of such termination.

11. In the event Licensor grants to any other person, firm or corporation, a license similar to this license under said letters patent to manufacture, use and sell said perforated plasterboard lath under more favorable terms or conditions than stated herein, Licensor shall immediately give notice thereof to Licensee, and grant to Licensee a license on such terms and conditions, or amend this agreement so as to extend such more favorable terms and
9716 conditions to Licensee during the time they are enjoyed by such other person, firm or corporation.

12. The licenses herein granted are personal to Licensee, and the same or any right therein or thereunder shall not be sold, assigned, or transferred without the written consent of Licensor first had and obtained; and if this

agreement or any of Licensee's rights hereunder are transferred by operation of law, then Licensor may cancel this agreement at any time thereafter, with or without notice.

13. This agreement shall continue in force and effect for the full term of said letters patent and any extensions or reissues thereof; provided, however, that the same may be canceled or terminated by either party hereto upon giving to the other of said parties one year's written notice of its intention to cancel or terminate the same. Upon the giving of such notice this contract and all of the provisions hereof, together with said license, shall, at the end of six (6) months from the end of the period stated in such notice, be and become canceled and terminated without the necessity of any further notice by either party hereto. Licensee, by reason of any such cancelation or termination, shall not be relieved from the payment of any royalties or license fees payable hereunder for all of said patented perforated plasterboard lath sold or used by it up to the date of final cancelation or termination hereof.

14. Any and all notices required to be served hereunder upon Licensor may be served by mailing a copy thereof, postage prepaid, registered mail, addressed to Licensor at 300 West Adams Street, Chicago, Illinois; and any and all notices required to be served hereunder upon Licensee may be served by mailing a copy thereof, postage prepaid, registered mail, addressed to Licensee at Delawanna, Clifton, New Jersey; and such mailing of notice shall constitute proper service of notice hereunder.

9717 15. This agreement shall be binding upon and enure to the benefit of the successors and assigns of the parties hereto; provided, however, that nothing herein contained shall be construed to permit any assignment of this agreement or of any rights hereunder except as hereinabove specifically provided.

In witness whereof, the parties hereto have hereunto caused these presents to be signed on their behalf by their respective presidents, attested by their respective secretaries, and their corporate seals hereunto affixed, all done the day and year first above written.

UNITED STATES GYPSUM COMPANY
By W. L. KEADY
Vice-President

ATTEST:
N. O. LANG, *Ass't Secretary.*

KELLEY PLASTERBOARD COMPANY, INC.
By FREDERICK TOMKINS
President.

ATTEST:
——— ——— *Secretary.*

9718 *Government's Exhibit No. 32*

JANUARY 3, 1939.

NEWARK PLASTER COMPANY (A Merged Corporation),
Newark, New Jersey:

GENTLEMEN:- In view of the fact that perforated plasterboard lath, which also embodies the claims of the patents contained in our original board license, has attained such importance and constitutes a large volume of the board manufactured and sold thereunder, we have decided to grant to you, as one of our board licensees, the right to use our U. S. Letters Patent No. 1,938,354 in the manufacture and sale of plasterboard without the payment of additional royalties or license fees, the same as if such patent were listed in Exhibit A of our original board license, upon the terms and conditions hereinafter set forth.

You are therefore granted an indivisible and non-exclusive license to manufacture at your plants perforated plasterboard lath having a gypsum core and paper covering adhering thereto, embodying the claims of Letters Patent of the United States No. 1,938,354, and of selling and using the same in the United States of America and the territories and possessions thereof, subject to the terms and conditions hereinafter set forth.

It is understood that nothing herein contained shall give you the right to use any of our other patents, or change or alter in any way the terms of your original board license agreement of April 23, 1930, granted Kelley Plasterboard Company, Inc. and heretofore assigned to you, it being understood that your only right to manufacture and sell

gypsum plasterboard and/or gypsum wallboard, including perforated plasterboard lath, embodying the claims of any of the patents set forth and described in Exhibit A of your said original board license agreement, is under and in accordance with the terms and conditions of said last mentioned agreement.

It is of course understood that all perforated plasterboard lath manufactured and sold by you shall be included in computing your royalties or license fees under your said original board license agreement, and you will make reports of your manufacture and sale thereof, and we shall have the right to inspect books of account and records, in the same manner and to the same extent as set forth in said original board license agreement.

You are not to manufacture any of said lath for or to sell the same to another manufacturer or to any manufacturer or distributor selling plaster or gypsum products as a manufacturer, or to deliver any of said lath to any person or company on consignment, or to sell any of the same of inferior manufacture, commonly known as "seconds".

9719 You will mark all such patented lath "licensed under United States Letters Patent No. 1,938,354".

You will not assign this license without our written consent, nor shall the same or any right hereunder be transferred by operation of law or otherwise.

This license may be cancelled or terminated by either party hereto upon giving to the other party hereto one (1) year's written notice of cancellation or termination thereof. Any such notice shall become effective upon depositing the same in the United States mails, postage prepaid and registered, addressed to you at your principal office in Newark, New Jersey, or to us at our principal office, 300 West Adams Street, Chicago, Illinois.

This license is granted in place of similar license accepted by Kelley Plasterboard Company, Inc., on September 23, 1938, which, with perforated plasterboard lath license agreement dated June 23, 1937, granted said Kelley Plasterboard Company, Inc., is now cancelled and terminated; provided, however, that you assume all liability of said Kelley Plasterboard Company, Inc., under said cancelled licenses which accrued prior to the date hereof:

This license, when accepted by you, shall become effective as of the date hereof and continue until cancelled or terminated by either party as aforesaid.

If satisfactory, please sign the duplicate copy of this letter, indicating your acceptance thereof, and return the same to us.

Very truly yours

UNITED STATES GYPSUM COMPANY,

By W. L. KEADY *Vice-President*

Accepted, this 3rd
day of January 1939.

NEWARK PLASTER COMPANY (A Merged Corporation)

By FREDERICK TOMKINS *Pres.*

9720 *Government's Exhibit No. 33*

UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

MARCH 21, 1931.

Board License Bulletin No. 1—Carload Shipments

DEAR SIRS: Referring to paragraph two of our license contract with you, you are hereby notified that the minimum prices now in effect at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent), including Haggerty patent number 1,500,452 and Hite patent number 1,230,297, are as follows:

Delivered price is lowest combination of mill price plus freight from that mill to destination. Prices f.o.b. cars:	3/8" Gypsum Wallboard (Wt. 1850 # per M)	1/4" Gypsum Wallboard (Wt. 1250 # per M)	1/2" Gypsum Wallboard (Wt. 2250 # per M)	3/4" Gypsum Wallboard (Wt. 3600 # per M)	3/8" Tiled Gypsum Wallboard (Wt. 1850 # per M)	3/8" Gypsum Plasterboard (Wt. 1850 # per M)	1/4" Gypsum Plasterboard (Wt. 1250 # per M)	1/2" Gypsum Plasterboard (Wt. 2250 # per M)
Oakfield, N. Y.	27.00	24.50	29.50	— —	50.00	15.00	15.00	16.25
Plastereo, Va.	27.00	24.50	29.50	— —	50.00	15.00	15.00	16.25
Gypsum, O.	27.00	24.50	29.50	35.00	50.00	15.00	15.00	16.25
#Grand Rapids, Mich.	27.00	24.50	29.50	— —	50.00	15.00	15.00	16.25
*Ft. Dodge, Ia.	27.00	24.50	29.50	35.00	50.00	15.50	15.50	16.25
*Southard, Okla.	27.00	24.50	29.50x	35.00	50.00	15.50	15.50	16.25
*Sweetwater, Tex.	27.00	24.50	29.50x	— —	50.00	15.50	15.50	16.25
*Acme, Texas	27.00	24.50	29.50x	— —	50.00	15.50	15.50	16.25
Laramie, Wyo.	33.00	29.00	— —	— —	55.00	21.50	— —	— —
Loveland, Colo.	34.50	29.50	39.50	— —	57.50	22.00	— —	— —

* In shipments from Fort Dodge, Ia., Southard, Okla., Acme or Sweetwater, Texas, into Arizona, New Mexico, Colorado, Wyoming, Utah, Oklahoma, Texas, Kansas, Missouri, Nebraska, S. Dakota, N. Dakota, Minnesota, Arkansas, Louisiana, Iowa, Upper Michigan, and Wisconsin, use rates in effect prior to May 25, 1930, to arrive at delivered price.

x 1/2" Wallboard $28.00 per M. sq. ft. f.o.b. Sweetwater, Texas, Acme, Texas, or Southard, Oklahoma, for shipment into Oklahoma, Texas, Arkansas, Louisiana, New Mexico, and Arizona.

Straight or mixed cars board f.o.b. dealers siding in switching limits of Grand Rapids, Mich., add $1.00 per M to prices applying f.o.b. cars, Grand Rapids mill.

9721 Delivered Carload Prices, Chicago, Illinois, and Suburbs: Board in straight or mixed cars delivered to following suburbs, price is same as f.o.b. cars delivered in Chicago proper:

South Side: Argo, Blue Island, Chicago Heights, Clearing, Harvey, Homewood, Lansing, Midlothian, Oak Lawn, Oak Glen, Summitt, Dolton, Hegewisch, South Holland.

Minimum Price Cutstock Plasterboard to following markets as follows: 1/4" and 3/8"—$12.50 per M sq. ft. f.o.b. cars, Oakfield, N. Y.; Gypsum, Ohio; Grand Rapids, Michigan.

Markets: Buffalo, N. Y.; Niagara and Erie Counties.

Rochester, N. Y.; City of Rochester, and Monroe and Wayne Counties, N. Y.

Prices shall apply to all shipments made after receipt of this notice except only upon bona fide orders actually received and accepted by you at your home office in writing before receipt hereof and shipped by you within ten days after receipt of this notice.

This bulletin cancels all previous bulletins.

Very truly yours,

UNITED STATES GYPSUM COMPANY,

Vice-President in Charge Sales.

CFH'

9722 UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

MAY 14, 1931.

Board License Bulletin No. 1-A—Cancels Bulletin No. 1 of March 21, 1931—Carload Shipments

Licensees:

1. American A R Black (John A. Kling, Pres.)
2. Universal Eugene Holland
3. Certainteed C. O. Brown (cc—Warren Henley)
4. Atlantic W. P. Fuller (cc—L. I. Neale)
5. Ebsary Stromquist (cc—Fred Ebsary)
6. National M. N. Baker
7. Kelley Plas. Bd. Co. S. J. Kelley

DEAR SIRS: Referring to paragraph two of our license contract with you, you are hereby notified that the minimum prices now in effect at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent), including Haggerty patent number 1,500,452 and Hite patent number 1,230,297, are as follows:

Delivered price is lowest combination of mill price plus freight from that mill to destination. (s) Prices f.o.b. cars:	3/8" Gypsum Wallboard (Wt. 1850 # per M)	1/4" Gypsum Wallboard (Wt. 1250 # per M)	1/2" Gypsum Wallboard (Wt. 2250 # per M)	3/4" Gypsum Wallboard (Wt. 3600 # per M)	3/8" Tiled Gypsum Wallboard (Wt. 1850 # per M)	3/8" Gypsum Plasterboard (Wt. 1850 # per M)	1/4" Gypsum Plasterboard (Wt. 1250 # per M)	1/2" Gypsum Plasterboard (Wt. 2250 # per M)
Oakfield, N. Y.	27.00	24.50	29.50	— —	50.00	15.00	15.00	16.25
Plasterco, Va.	27.00	24.50	29.50	— —	50.00	15.00	15.00	16.25
Gypsum, Ohio	27.00	24.50	29.50	35.00	50.00	15.00	15.00	16.25
#Grand Rapids, Mich.	27.00	24.50	29.50	— —	50.00	15.00	15.00	16.25
*Fort Dodge, Ia.	27.00	24.50	29.50	35.00	50.00	15.00	15.00	16.25†
*Southard, Okla.	27.00	24.50	29.50x	35.00	50.00	15.00	15.00	16.25†
*Sweetwater, Texas	27.00	24.50	29.50x	— —	50.00	15.00	15.00	16.25†
*Acme, Texas	27.00	24.50	29.50x	— —	50.00	15.00	15.00	16.25†
Laramie, Wyo.	33.00	29.00	— —	— —	55.00	21.50	— —	— —
Loveland, Colo.	34.50	29.50	39.50	— —	57.50	22.00	— —	— —

* In shipments from Fort Dodge, Iowa, Southard, Okla., Acme or Sweetwater, Texas, into Arizona, New Mexico, Colorado, Wyoming, Utah, Oklahoma,

(*Reference notes continued on following page*)

9723 Delivered Carload Prices, Chicago, Illinois, and Suburbs: Board in straight or mixed cars delivered to following area, price is same as f.o.b. cars delivered in Chicago: Cook county, Du Page county, and the following towns in Lake county, Illinois; Deerfield, Highland Park, and Lake Forest.†

Minimum Price Cutstock Plasterboard to following markets, as follows: 1/4" and 3/8"—$12.50 per M sq. ft. f.o.b. cars, Oakfield, N. Y.; and Gypsum, Ohio.†

Markets: Buffalo, N. Y.; Niagara and Erie Counties. Rochester, N. Y.; City of Rochester, and Monroe and Wayne Counties, N. Y.

Prices shall apply to all shipments made after receipt of this notice except only upon bona fide orders actually received and accepted by you at your home office in writing before receipt hereof and shipped by you within ten days after receipt of this notice.

Very truly yours,

UNITED STATES GYPSUM COMPANY,

_____,

Vice President in Charge of Sales.

† Indicates change in this revision.

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(Reference notes continued from preceding page)

Texas, Kansas, Missouri, Nebraska, S. Dakota, N. Dakota, Minnesota, Arkansas, Louisiana, Iowa, Upper Michigan, and Wisconsin, use rates in effect prior to May 25, 1930, to arrive at delivered price; except where rates effective after May 25, 1930 are lower, use these rates.

x 1/2" Wallboard $28.00 per M sq. ft. f.o.b. Sweetwater, Texas, Acme, Texas; or Southard, Oklahome, for shipment into Oklahoma, Texas, Arkansas, Louisiana, New Mexico, and Arizona.

Straight or mixed cars board f.o.b. dealers siding in switching limits of Grand Rapids, Mich., add $1.00 per M to prices applying f.o.b. cars, Grand Rapids mill.

(s) On all stop-over cars add to mill price freight rate to final destination regardless of lower rate which might apply to any intermediate point at which stop is made (except where rate to intermediate point is higher, in which event delivered price is mill price plus highest rate to any intermediate point at which stop is made). On stop-over cars add stop-over charge.†

9724

UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

MAY 25, 1931.

Board License Bulletin No. 1—Cancels Bulletin No. 1-A—Carload Shipments

DEAR SIRS: Referring to paragraph two of our license contract with you, you are hereby notified that the minimum prices effective June 1st, 1931 at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent), including Haggerty patent number 1,500,452 and Hite patent number 1,230,297, are as follows:

Delivered price is lowest combination of mill price plus freight from that mill to destination. (s) Prices f.o.b. cars:	3/8" Gypsum Wallboard (Wt. 1600# per M) †	1/4" Gypsum Wallboard (Wt. 1050# per M) †	1/2" Gypsum Wallboard (Wt. 2150# per M) †	3/4" Gypsum Wallboard (Wt. 3300# per M) †	3/8" Tiled Gypsum Wallboard (Wt. 1600# per M) †	3/8" Gypsum Plasterboard (Wt. 1600# per M) †	1/4" Gypsum Plasterboard (Wt. 1050# per M) †	1/2" Gypsum Plasterboard (Wt. 2150# per M) †
Oakfield, N. Y.	27.00	24.50	29.50	— —	50.00	15.00	15.00	16.25
Plastereo, Va.	27.00	24.50	29.50	— —	50.00	15.00	15.00	16.25
Gypsum, Ohio	27.00	24.50	29.50	35.00	50.00	15.00	15.00	16.25
#Grand Rapids, Mich.	27.00	24.50	29.50	— —	50.00	15.00	15.00	16.25
*Fort Dodge, Ia.	27.00	24.50	29.50	35.00	50.00	15.00	15.00	16.25
*Southard, Okla.	27.00	24.50	29.50x	35.00	50.00	15.00	15.00	16.25
*Sweetwater, Texas	27.00	24.50	29.50x	— —	50.00	15.00	15.00	16.25
*Acme, Texas	27.00	24.50	29.50x	— —	50.00	15.00	15.00	16.25
Laramie, Wyo.	33.00	29.00	— —	— —	55.00	21.50	— —	— —
Loveland, Colo.	34.50	29.50	39.50	— —	57.50	22.00	— —	— —

* In shipments from Fort Dodge, Iowa, Southard, Okla., Acme or Sweetwater, Texas, into Arizona, New Mexico, Colorado, Wyoming, Utah, Oklahoma, Texas, Kansas, Missouri, Nebraska, S. Dakota, N. Dakota, Minnesota, Arkansas, Louisiana, Iowa, Upper Michigan, and Wisconsin, use rates in effect prior to May 25, 1930, to arrive at delivered price; except where rates effective after May 25, 1930 are lower, use these rates.

x 1/2" Wallboard $28.00 per M sq. ft. f.o.b. Sweetwater, Texas, Acme, Texas; or Southard, Oklahoma, for shipment into Oklahoma, Texas, Arkansas, Louisiana, New Mexico, and Arizona.

(*Reference notes continued on following page*)

9725 † The above prices shall apply to the sale of all board embodying the claims of our patents in all markets except where an exception is made as hereinafter expressly stated:

Delivered Carload Prices, Chicago, Illinois, and Suburbs: Board in straight or mixed cars delivered to following area, price is same as f.o.b. cars delivered in Chicago: Cook County, Du Page county, and the following towns in Lake county, Illinois; Deerfield, Highland Park, and Lake Forest.

Delivered Carload Prices, Detroit, Michigan, and Suburbs: Board in straight or mixed cars delivered to following area, price is same as f.o.b. cars delivered in Detroit: Wayne county; and towns of Birmingham, Clawson, Farmington, Ferndale and Royal Oak in Oakland county; and Warren, Halfway, Fraser, Roseville and Centerline in Macomb county, Michigan.

Minimum Price Cutstock Plasterboard to following markets, as follows: 1/4" and 3/8"—$12.50 per M sq. ft. f.o.b. cars, Oakfield, N. Y.; and Gypsum, Ohio.

Markets: Buffalo, N. Y.; Niagara and Erie Counties. Rochester, N. Y.; City of Rochester, and Monroe and Wayne Counties, N. Y.

Prices shall apply to all shipments made after June 1st except only upon bona fide orders actually received and accepted by you at your home office in writing prior to June 1st and shipped by you within ten days after June 1st.

Very truly yours,

UNITED STATES GYPSUM COMPANY,

_____,

Vice President in Charge of Sales.

† Indicates change in this revision.

CFH'

(*Reference notes continued from preceding page*)

Straight or mixed cars board f.o.b. dealers siding in switching limits of Grand Rapids, Mich., add $1.00 per M to prices applying f.o.b. cars, Grand Rapids mill.

(s) On all stop-over cars add to mill price freight rate to final destination regardless of lower rate which might apply to any intermediate point at which stop is made (except where rate to intermediate point is higher, in which event delivered price is mill price plus highest rate to any intermediate point at which stop is made). On stop-over cars add stop-over charge.

9726 UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

OCTOBER 16, 1931.

Board License Bulletin No. 1—Cancels Previous Bulletin No. 1—Carload Shipments

DEAR SIRS: Referring to paragraph two of our license contract with you, you are hereby notified that the minimum prices effective at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent); including Haggerty patent number 1,500,452 and Hite patent number 1,230,297, are as follows:

Delivered price is lowest combination of mill price plus freight from that mill to destination. (s) Prices f.o.b. cars:	3/8" Gypsum Wallboard (Wt. 1600# per M)	1/4" Gypsum Wallboard (Wt. 1050# per M)	1/2" Gypsum Wallboard (Wt. 2150# per M)	3/4" Gypsum Wallboard (Wt. 3300# per M)	3/8" Tiled Gypsum Wallboard (Wt. 1600# per M)	3/8" Gypsum Plasterboard (Wt. 1600# per M)	1/4" Gypsum Plasterboard (Wt. 1050# per M)	1/2" Gypsum Plasterboard (Wt. 2150# per M)
Oakfield, N. Y.	27.00	24.50	29.50	— —	50.00	15.00	15.00	16.25
Plasterco, Va.	27.00	24.50	29.50	— —	50.00	15.00	15.00	16.25
Gypsum, Ohio	27.00	24.50	29.50	35.00	50.00	15.00	15.00	16.25
#Grand Rapids, Mich.	27.00	24.50	29.50	— —	50.00	15.00	15.00	16.25
*Fort Dodge, Ia.	27.00	24.50z	29.50	35.00	50.00	15.00	15.00	16.25†
*Southard, Okla.	27.00	24.50z	29.50x	35.00	50.00	15.00	15.00	16.25†
*Sweetwater, Texas	27.00	24.50z	29.50x	— —	50.00	15.00	15.00	16.25†
*Acme, Texas	27.00	24.50z	29.50x	— —	50.00	15.00	15.00	16.25†
Laramie, Wyo.	33.00	29.00z	— —	— —	55.00	21.50	— —	— —†
Loveland, Colo.	34.50	29.50z	39.50	— —	57.50	22.00	— —	— —†

* In shipments from Fort Dodge, Iowa, Southard, Okla., Acme or Sweetwater, Texas, into Arizona, New Mexico, Colorado, Wyoming, Utah, Oklahoma, Texas, Kansas, Missouri, Nebraska, S. Dakota, N. Dakota, Minnesota, Arkansas, Louisiana, Iowa, Upper Michigan, and Wisconsin, use rates in effect prior to May 25, 1930, to arrive at delivered price; except where rates effective after May 25, 1930 are lower, use these rates.

x 1/2" Wallboard $28.00 per M sq. ft. f.o.b. Sweetwater, Texas, Acme, Texas; or Southard, Oklahoma, for shipment into Oklahoma, Texas, Arkansas, Louisiana, New Mexico, and Arizona.

(*Reference notes continued on following page*)

9727 The above prices shall apply to the sale of all board embodying the claims of our patents in all markets except where an exception is made as hereinafter expressly stated.†

Delivered Carload Prices, St. Louis, Mo. and Suburbs: Board in straight or mixed cars delivered to following stations, price is same as f.o.b. cars delivered in St. Louis: Ferguson, Kinlock, Overland, Brentwood, Kirkwood, Jennings, Wellston, Clayton, Webster Groves, Maplewood, Gravois Station, Old Orchard, and Lake Junction.†

Delivered Carload Prices, Kansas City, Mo. and Suburbs: Board in straight or mixed cars delivered to following stations, price is same as f.o.b. cars delivered to Kansas City, Mo.; Dodson and Edgecomb, Mo.; Rosedale, Waldo, Argentine, Westport, and Kansas City, Kansas.†

Delivered Carload Prices, Cleveland, O. and Suburbs: Board in straight or mixed cars delivered to following stations, price is same as f.o.b. cars delivered in Cleveland, O.; Euclid, O.; North Randall, O.†

Delivered Carload Prices, Chicago, Illinois, and Suburbs; Board in straight or mixed cars delivered to following area, price is same as f.o.b. cars delivered in Chicago: Cook County, Du Page County, and the following towns in Lake County, Illinois; Deerfield, Highland Park, and Lake Forest.

9728 Delivered Carload Prices, Detroit, Michigan, and Suburbs: Board in straight or mixed cars delivered to following area, price is same as f.o.b. cars delivered in Detroit: Wayne County; and towns of Birmingham, Clawson, Farmington, Ferndale and Royal Oak in Oakland

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(Reference notes continued from preceding page)

Straight or mixed cars board f.o.b. dealers siding in switching limits of Grand Rapids, Mich., add $1.00 per M to prices applying f.o.b. cars, Grand Rapids mill.

(s) On all stop-over cars add to mill price freight rate to final destination regardless of lower rate which might apply to any intermediate point at which stop is made (except where rate to intermediate point is higher, in which event delivered price is mill price plus highest rate to any intermediate point at which stop is made). On stop-over cars add stop-over charge.

z Minimum price 1/4" Wallboard for shipment into following states, deduct $2.00 per M. sq. ft. from mill prices shown on page 1: Montana, Wyoming, Colorado, Kansas, Nebraska, South Dakota, North Dakota, Minnesota, Iowa, Missouri, and Arkansas.†

county; and Warren, Halfway, Fraser, Roseville and Centerline in Macomb county, Michigan.

Minimum Price Cutstock Plasterboard to following markets, as follows: 1/4" and 3/8"—$12.50 per M sq. ft. f.o.b. cars, Oakfield, N. Y.; and Gypsum, Ohio.

Markets: Buffalo, N. Y.; Niagara and Erie Counties. Rochester, N. Y.; City of Rochester, and Monroe and Wayne Counties, N. Y.

Prices shall apply to all shipments made after receipt of this notice except only upon bona fide orders actually received and accepted by you at your home office in writing before receipt hereof and shipped by you within ten days after receipt of this notice.

Very truly yours,

UNITED STATES GYPSUM COMPANY,

_____ _____,

Vice President in Charge of Sales.

† Indicates changes in this reissue.

CFH'

9729

UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

DECEMBER 28, 1931.

Board License Bulletin No. 1—Cancels Previous Bulletin No. 1—Carload Shipments

DEAR SIRS: Referring to paragraph two of our license contract with you, you are hereby notified that the minimum prices effective immediately, at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent), including Haggerty patent number 1,500,452 and Hite patent number 1,230,297, are as follows:

Delivered price is lowest combination of mill price plus freight from that mill to destination. (s) Prices f.o.b. cars:	3/8" Gypsum Wallboard (Wt. 1600 # per M)	1/4" Gypsum Wallboard (Wt. 1050 # per M)	1/2" Gypsum Wallboard (Wt. 2150 # per M)	3/4" Gypsum Wallboard (Wt. 3300 # per M)	3/8" Tiled Gypsum Wallboard (Wt. 1600 # per M)	3/8" Gypsum Plasterboard (Wt. 1600 # per M)	1/4" Gypsum Plasterboard (Wt. 1050 # per M)	1/2" Gypsum Plasterboard (Wt. 2150 # per M)
Oakfield, N. Y.	27.00	24.50	29.50	35.00	50.00	15.00	15.00	16.25
Plasterco, Va.	27.00	24.50z	29.50	— —	50.00	15.00	15.00	16.25
Gypsum, Ohio	27.00	24.50z	29.50	35.00	50.00	15.00	15.00	16.25
#Grand Rapids, Mich.	27.00	24.50z	29.50	— —	50.00	15.00	15.00	16.25
*Fort Dodge, Ia.	27.00	24.50z	29.50	35.00	50.00	15.00	15.00	16.25
*Southard, Okla.	27.00	24.50z	29.50x	35.00	50.00	15.00	15.00	16.25
*Sweetwater, Texas	27.00	24.50z	29.50x	— —	50.00	15.00	15.00	16.25
*Acme, Texas	27.00	24.50z	29.50x	— —	50.00	15.00	15.00	16.25
Laramie, Wyo.	33.00	29.00z	— —	— —	55.00	21.50	— —	— —
Loveland, Colo.	34.50	29.50z	39.50	— —	57.50	22.00	— —	— —

* In shipments from Fort Dodge, Iowa, Southard, Okla., Acme or Sweetwater, Texas, into Arizona, New Mexico, Colorado, Wyoming, Utah, Oklahoma, Texas, Kansas, Missouri, Nebraska, S. Dakota, N. Dakota, Minnesota, Arkansas, Louisiana, Iowa, Upper Michigan, and Wisconsin, use rates in effect prior to May 25, 1930, to arrive at delivered price; except where rates effective after May 25, 1930, are lower, use these rates.

x 1/2" Wallboard $28.00 per M sq. ft. f.o.b. Sweetwater, Texas, Acme, Texas; or Southard, Oklahoma, for shipment into Oklahoma, Texas, Arkansas, Louisiana, New Mexico, and Arizona.

(Reference notes continued on following page)

9730 The above prices shall apply to the sale of all board embodying the claims of our patents in all markets except where an exception is made as hereinafter expressly stated:

Delivered Carload Prices, St. Louis, Mo. and Suburbs: Board in straight or mixed cars delivered to following stations, price is same as f.o.b. cars delivered in St. Louis: Ferguson, Kinlock, Overland, Brentwood, Kirkwood, Jennings, Wellston, Clayton, Webster Groves, Maplewood, Gravois Station, Old Orchard, and Lake Junction.

Delivered Carload Prices, Kansas City, Mo. and Suburbs: Board in straight or mixed cars delivered to following stations, price is same as f.o.b. cars delivered to Kansas City, Mo.; Dodson and Edgecomb, Mo.; Rosedale, Waldo, Argentine, Westport, and Kansas City, Kansas.

Delivered Carload Prices, Cleveland, O. and Suburbs: Board in straight or mixed cars delivered to following stations, price is same as f.o.b. cars delivered in Cleveland, O.; Euclid, O.; North Randall, O.

Delivered Carload Prices, Chicago, Illinois and Suburbs: Board in straight or mixed cars delivered to following area, price is same as f.o.b. cars delivered in Chicago: Cook County, Du Page County, and the following towns in Lake County, Illinois; Deerfield, Highland Park, and Lake Forest.

9731 Delivered Carload Prices, Detroit, Michigan, and Suburbs: Board in straight or mixed cars delivered to following area, price is same as f.o.b. cars delivered in Detroit: Wayne county; and towns of Birmingham, Claw-

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(Reference notes continued from preceding page)

Straight or mixed cars board f.o.b. dealers siding in switching limits of Grand Rapids, Mich., add $1.00 per M to prices applying f.o.b. cars, Grand Rapids mill.

(s) On all stop-over cars add to mill price freight rate to final destination regardless of lower rate which might apply to any intermediate point at which stop is made (except where rate to intermediate point is higher, in which event delivered price is mill price plus highest rate to any intermediate point at which stop is made). On stop-over cars add stop-over charge.

z Minimum price 1/4" Wallboard for shipment into following states, deduct $2.00 per M sq. ft. from mill prices shown on page 1: Montana, Wyoming, Colorado, Kansas, Nebraska, South Dakota, North Dakota, Minnesota, Iowa, Missouri, Arkansas, Kentucky, Tennessee, Mississippi, Alabama, and La.

son, Farmington, Ferndale and Royal Oak in Oakland county; and Warren, Halfway, Fraser, Roseville and Centerline in Macomb county, Michigan.

Minimum Price Cutstock Plasterboard to following markets, as follows: 1/4" and 3/8"—$12.50 per M sq. ft. f.o.b. cars, Oakfield, N. Y.; and Gypsum, Ohio.

Markets: Buffalo, N. Y.; Niagara and Erie Counties. Rochester, N. Y.; City of Rochester, and Monroe and Wayne Counties, N. Y.

Prices shall apply to all shipments made after receipt of this notice except only upon bona fide orders actually received and accepted by you at your home office in writing before receipt hereof and shipped by you within ten days after receipt of this notice.

Very truly yours,

UNITED STATES GYPSUM COMPANY,

_____,

Vice President in Charge of Sales.

† Indicates changes in this reissue.

CFH'

9732 UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

MARCH 8, 1932.

Board License Bulletin No. 1—Cancels Previous Bulletin No. 1—Carload Shipments

DEAR SIRS: Referring to paragraph two of our license contract with you, you are hereby notified that the minimum prices effective immediately, at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent); including Haggerty patent number 1,500,452 and Hite patent number 1,230,297, are as follows:

Delivered price is lowest combination of mill price plus freight from that mill to destination. (s) Prices f.o.b. cars:	3/8" Gypsum Wallboard (Wt. 1600# per M	1/4" Gypsum Wallboard (Wt. 1050# per M)	1/2" Gypsum Wallboard (Wt. 2150# per M)	3/4" Gypsum Wallboard (Wt. 3300# per M)	3/8" Tiled Gypsum Wallboard (Wt. 1600# per M)	3/8" Gypsum Plasterboard (Wt. 1600# per M)	1/4" Gypsum Plasterboard (Wt. 1050# per M)	1/2" Gypsum Plasterboard (Wt. 2150# per M)
Oakfield, N. Y.	27.00	24.50	29.50	35.00	50.00	15.00	15.00	16.25
Plasterco, Va.	27.00	24.50z	29.50	— —	50.00	15.00	15.00	16.25
Gypsum, Ohio	27.00	24.50z	29.50	35.00	50.00	15.00	15.00	16.25
#Grand Rapids, Mich.	27.00	24.50z	29.50	— —	50.00	15.00	15.00	16.25
*Fort Dodge, Ia.	27.00	24.50z	29.50	35.00	50.00	15.00	15.00	16.25
*Southard, Okla.	27.00	24.50z	29.50x	35.00	50.00	15.00	15.00	16.25
*Sweetwater, Texas	27.00	24.50z	29.50x	— —	50.00	15.00	15.00	16.25
*Acme, Texas	27.00	24.50z	29.50x	— —	50.00	15.00	15.00	16.25
Laramie, Wyo.	33.00	29.00z	— —	— —	55.00	21.50	— —	— —
Loveland, Colo.	34.50	29.50z	39.50	— —	57.50	22.00	— —	— —

* In shipments from Fort Dodge, Iowa, Southard, Okla., Acme or Sweetwater, Texas, into Arizona, New Mexico, Colorado, Wyoming, Utah, Oklahoma, Texas, Kansas, Missouri, Nebraska, S. Dakota, N. Dakota, Minnesota, Arkansas, Louisiana, Iowa, Upper Michigan, and Wisconsin, use rates in effect prior to May 25, 1930, to arrive at delivered price; except where rates effective after May 25, 1930 are lower, use these rates.

Minimum prices for wallboard apply to 32" x 48" board shipped into this area.†

x 1/2" Wallboard $28.00 per M sq. ft. f.o.b. Sweetwater, Texas, Acme, Texas; or Southard, Oklahoma; for shipment into Oklahoma, Texas, Arkansas, Louisiana, New Mexico, and Arizona.

(Reference notes continued on following page)

9733 The above prices shall apply to the sale of all board embodying the claims of our patents in all markets except where an exception is made as hereinafter expressly stated:

Delivered Carload Prices, St. Louis, Mo. and Suburbs: Board in straight or mixed cars delivered to following stations, price is same as f.o.b. cars delivered in St. Louis: Ferguson, Kinlock, Overland, Brentwood, Kirkwood, Jennings, Wellston, Clayton, Webster Groves, Maplewood, Gravois Station, Old Orchard, and Lake Junction.

Delivered Carload Prices, Kansas City, Mo. and Suburbs: Board in straight or mixed cars delivered to following stations, price is same as f.o.b. cars delivered to Kansas City, Mo.; Dodson and Edgecomb, Mo.; Rosedale, Waldo, Argentine, Westport, and Kansas City, Kansas.

Delivered Carload Prices, Cleveland, O. and Suburbs: Board in straight or mixed cars delivered to following stations, price is same as f.o.b. cars delivered in Cleveland, O.; Euclid, O.; North Randall, O.

Delivered Carload Prices, Chicago, Illinois and Suburbs: Board in straight or mixed cars delivered to following area, price is same as f.o.b. cars delivered in Chicago: Cook County, Du Page county, and the following towns in Lake County, Illinois; Deerfield, Highland Park, and Lake Forest.

9734 Delivered Carload Prices, Detroit, Michigan, and Suburbs: Board in straight or mixed cars delivered to following area, price is same as f.o.b. cars delivered in Detroit: Wayne county; and towns of Birmingham, Claw-

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(Reference notes continued from preceding page)

Straight or mixed cars board f.o.b. dealers siding in switching limits of Grand Rapids, Mich., add $1.00 per M to prices applying f.o.b. cars, Grand Rapids mill.

(s) On all stop-over cars add to mill price freight rate to final destination regardless of lower rate which might apply to any intermediate point at which stop is made (except where rate to intermediate point is higher, in which event delivered price is mill price plus highest rate to any intermediate point at which stop is made). On stop-over cars add stop-over charge.

z Minimum price 1/4" Wallboard for shipment into following states, deduct $2.00 per M sq. ft. from mill prices shown on page 1: Montana, Wyoming, Colorado, Kansas, Nebraska, South Dakota, North Dakota, Minnesota, Iowa, Missouri, Arkansas, Kentucky, Tennessee, Mississippi, Alabama, and Louisiana; also city of Superior, Wisconsin.†

son, Farmington, Ferndale and Royal Oak in Oakland county; and Warren, Halfway, Fraser, Roseville and Centerline in Macomb county, Michigan.

Minimum Price Cutstock Plasterboard to following markets, as follows: 1/4" and 3/8"—$12.50 per M sq. ft. f.o.b. cars, Oakfield, N. Y.; and Gypsum, Ohio.

Markets: Buffalo, N. Y.; Niagara and Erie Counties. Rochester, N. Y.; City of Rochester, and Monroe and Wayne Counties, N. Y.

Prices shall apply to all shipments made after receipt of this notice except only upon bona fide orders actually received and accepted by you at your home office in writing before receipt hereof and shipped by you within ten days after receipt of this notice.

Very truly yours,

UNITED STATES GYPSUM COMPANY,

_____,

Vice President in Charge of Sales.

† Indicates changes in this reissue.

CFH'

9735 UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

APRIL 5, 1932.

Board License Bulletin No. 1—Cancels Previous Bulletin No. 1 and Supplements—Carload Shipments

DEAR SIRS: Referring to paragraph two of our license contract with you, you are hereby notified that the minimum prices effective immediately, at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent); including Haggerty patent number 1,500,452 and Hite patent number 1,230,297, are as follows:

Delivered price is lowest combination of mill price plus freight from that mill to destination. (s) Prices f.o.b. cars:	3/8" Gypsum Wallboard (Wt. 1600# per M)	1/4" Gypsum Wallboard (Wt. 1050# per M)	1/2" Gypsum Wallboard (Wt. 2150# per M)	3/4" Gypsum Wallboard (Wt. 3300# per M)	3/8" Tiled Gypsum Wallboard (Wt. 1600# per M)	3/8" Gypsum Plasterboard (Wt. 1600# per M)	1/4" Gypsum Plasterboard (Wt. 1050# per M)	1/2" Gypsum Plasterboard (Wt. 2150# per M)
Oakfield, N. Y.	27.00	24.50	29.50	35.00	50.00	15.00	15.00	16.25
Plasterco, Va.	27.00	24.50z	29.50	— —	50.00	15.00	15.00	16.25
Gypsum, Ohio	27.00	24.50z	29.50	35.00	50.00	15.00	15.00	16.25
#Grand Rapids, Mich.	27.00	24.50z	29.50	— —	50.00	15.00	15.00	16.25
*Fort Dodge, Ia.	27.00	24.50z	29.50	35.00	50.00	15.00	15.00	16.25
*Southard, Okla.	27.00	24.50z	29.50x	35.00	50.00	15.00	15.00	16.25
*Sweetwater, Texas	27.00	24.50z	29.50x	— —	50.00	15.00	15.00	16.25
*Acme, Texas	27.00	24.50z	29.50x	— —	50.00	15.00	15.00	16.25
Laramie, Wyo.	33.00	29.00z	— —	— —	55.00	21.50	— —	— —
Loveland, Colo.	34.50	29.50z	39.50	— —	57.50	22.00	— —	— —

* In shipments from Fort Dodge, Iowa, Southard, Okla., Acme or Sweetwater, Texas, into Arizona, New Mexico, Colorado, Wyoming, Utah, Oklahoma, Texas, Kansas, Missouri, Nebraska, S. Dakota, N. Dakota, Minnesota, Arkansas, Louisiana, Iowa, Upper Michigan, and Wisconsin, use rates in effect prior to May 25, 1930, to arrive at delivered price; except where rates effective after May 25, 1930 are lower, use these rates.

Minimum prices for wallboard apply to 32" x 48" and 36" x 48" sizes shipped into this area, except where used for specific roof jobs, in which event plasterboard prices shall apply.

(*Reference notes continued on following page*)

9736 The above prices shall apply to the sale of all board embodying the claims of our patents in all markets except where an exception is made as hereinafter expressly stated:

Delivered Carload Prices, St. Louis, Mo. and Suburbs: Board in straight or mixed cars delivered to following stations, price is same as f.o.b. cars delivered in St. Louis: Ferguson, Kinlock, Overland, Brentwood, Kirkwood, Jennings, Wellston, Clayton, Webster Groves, Maplewood, Gravois Station, Old Orchard, and Lake Junction.

Delivered Carload Prices, Kansas City, Mo. and Suburbs: Board in straight or mixed cars delivered to following stations, price is same as f.o.b. cars delivered to Kansas City, Mo.; Dodson and Edgecomb, Mo.; Rosedale, Waldo, Argentine, Westport, and Kansas City, Kansas.

Delivered Carload Prices, Cleveland, O. and Suburbs: Board in straight or mixed cars delivered to following stations, price is same as f.o.b. cars delivered in Cleveland, O.; Euclid, O.; North Randall, O.

Delivered Carload Prices, Chicago, Illinois and Suburbs: Board in straight or mixed cars delivered to following area, price is same as f.o.b. cars delivered in Chicago: Cook County, Du Page county, and the following towns in Lake County, Illinois; Deerfield, Highland Park, and Lake Forest.

9737 Delivered Carload Prices, Detroit, Michigan, and Suburbs: Board in straight or mixed cars delivered

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(Reference notes continued from preceding page)

x 1/2" Wallboard $28.00 per M sq. ft. f.o.b. Sweetwater, Texas, Acme, Texas; or Southard, Oklahoma, for shipment into Oklahoma, Texas, Arkansas, Louisiana, New Mexico, and Arizona.

Straight or mixed cars board f.o.b. dealers siding in switching limits of Grand Rapids, Mich., add $1.00 per M to prices applying f.o.b. cars, Grand Rapids mill.

(s) On all stop-over cars add to mill price freight rate to final destination regardless of lower rate which might apply to any intermediate point at which stop is made (except where rate to intermediate point is higher, in which event delivered price is mill price plus highest rate to any intermediate point at which stop is made). On stop-over cars add stop-over charge.

z Minimum price 1/4" Wallboard for shipment into following states, deduct $2.00 per M sq. ft. from mill prices shown on page 1: Montana, Wyoming, Colorado, Kansas, Nebraska, South Dakota, North Dakota, Minnesota, Iowa, Missouri, Arkansas, Kentucky, Tennessee, Mississippi, Alabama, Louisiana; Wisconsin, Upper Michigan, Virginia, W. Va., Okla. & Texas.

to following area, price is same as f.o.b. cars delivered in Detroit: Wayne county; and towns of Birmingham, Clawson, Farmington, Ferndale and Royal Oak in Oakland county; and Warren, Halfway, Fraser, Roseville and Centerline in Macomb county, Michigan.

Minimum Price Cutstock Plasterboard to following markets, as follows: 1/4" and 3/8"—$12.50 per M sq. ft. f.o.b. cars, Oakfield, N. Y.; and Gypsum, Ohio.

Markets: Buffalo, N. Y.; Niagara and Erie Counties. Rochester, N. Y.; City of Rochester, and Monroe and Wayne Counties, N. Y.

Prices shall apply to all shipments made after receipt of this notice except only upon bona fide orders actually received and accepted by you at your home office in writing before receipt hereof and shipped by you within ten days after receipt of this notice.

Very truly yours,

UNITED STATES GYPSUM COMPANY,

_____ _____,

Vice President in Charge of Sales.

† Indicates changes in this reissue.

CFH'

9738 UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

AUGUST 12, 1932.

Board License Bulletin No. 1—Cancels Previous Bulletin No. 1 and Supplements Thereto—Carload Shipments

DEAR SIRS: Referring to paragraph two of our license contract with you, you are hereby notified that the minimum prices effective immediately, at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent); including Haggerty patent number 1,500,452 and Hite patent number 1,230,297, are as follows:

Delivered price is lowest combination of mill price plus freight (including surcharge) from that mill to destination. In stop-over cars delivered price for any part of car is C. L. delivered price as above defined to point of delivery of that part of car. In every case rates, surcharges and minimum weights as shown in published freight tariffs apply.

Prices f.o.b. cars:	3/8" Gypsum Wallboard (Wt. 1600 # per M)	1/4" Gypsum Wallboard (Wt. 1050 # per M)	1/2" Gypsum Wallboard (Wt. 2150 # per M)	3/4" Gypsum Wallboard (Wt. 3300 # per M)	3/8" Tiled Gypsum Wallboard (Wt. 1600 # per M)	3/8" Gypsum Plasterboard (Wt. 1600 # per M)	1/4" Gypsum Plasterboard (Wt. 1050 # per M)	1/2" Gypsum Plasterboard (Wt. 2150 # per M)
(y) Oakfield, N. Y.	27.00	24.50	29.50	35.00	50.00	15.00	15.00	16.25
Plasterco, Va.	27.00	24.50z	29.50	— —	50.00	15.00	15.00	16.25
Gypsum, Ohio	27.00	24.50z	29.50	35.00	50.00	15.00	15.00	16.25
#Grand Rapids, Mich.	27.00	24.50z	29.50	— —	50.00	15.00	15.00	16.25
*Fort Dodge, Ia.	27.00	24.50z	29.50	35.00	50.00	15.00	15.00	16.25
*Southard, Okla.	27.00	24.50z	29.50x	35.00	50.00	15.00	15.00	16.25
*Sweetwater, Texas	27.00	24.50z	29.50x	— —	50.00	15.00	15.00	16.25
*Acme, Texas	27.00	24.50z	29.50x	— —	50.00	15.00	15.00	16.25
Laramie, Wyoming	33.00	29.00z	— —	— —	55.00	21.50	— —	— —
Loveland, Colo.	34.50	29.50z	39.50	— —	57.50	22.00	— —	— —

* In shipments from Fort Dodge, Iowa, Southard, Okla., Acme, or Sweetwater, Texas, into Arizona, New Mexico, Colorado, Wyoming, Utah, Oklahoma, Texas, Kansas, Missouri, Nebraska, S. Dakota, N. Dakota, Minnesota, Arkansas, Louisiana, Iowa, Upper Michigan, Wisconsin, use rates in effect prior to May 25, 1930, to arrive at delivered price; except where rates effective after May 25, 1930 are lower, use these rates.

(*Reference notes continued on following page*)

9739 The above prices shall apply to the sale of all board embodying the claims of our patents in all markets except where an exception is made as hereinafter expressly stated:

(1) Minimum Price Cutstock Plasterboard to following counties: 1/4" and 3/8"—$12.50 per M sq. ft. f.o.b. cars, Oakfield, N. Y. for shipment to Niagara, Erie, Monroe, and Wayne counties, N. Y.

Pickup price at Oakfield or delivered by truck to dealer's warehouse located in counties listed next above, $14.50 per M sq. ft. for 1/4" or 3/8" cutstock.

Pickup price at Buffalo warehouses, for destinations in counties listed in this paragraph, 1/4", $15.45 per M sq. ft.; 3/8", $15.94 per M sq. ft.

(2) Delivered Carload Prices, St. Louis, Mo. and Suburbs: Board in straight or mixed cars delivered to following stations, price is same as f.o.b. cars delivered in
9740 St. Louis: Ferguson, Kinlock, Overland, Brentwood, Kirkwood, Jennings, Wellston, Clayton, Webster Groves, Maplewood, Gravois Station, Old Orchard, and Lake Junction.

(Reference notes continued from preceding page)

Minimum prices for wallboard apply to 32" x 48" and 36" x 48" sizes shipped into this area, except where used for specific roof jobs, in which event plasterboard prices shall apply.

(x) 1/2" Wallboard $28.00 per M sq. ft. f.o.b. Sweetwater, Texas, Acme, Texas; or Southard, Oklahoma, for shipment into Oklahoma, Texas, Arkansas, Louisiana, New Mexico, and Arizona.

(z) Minimum prices 1/4" wallboard for shipment into following states, deduct $2.00 per M sq. ft. from mill prices shown on page 1: Montana, Wyoming, Colorado, Kansas, Nebraska, South Dakota, North Dakota, Minnesota, Iowa, Missouri, Arkansas, Kentucky, Tennessee, Mississippi, Alabama, Florida, Georgia, Louisiana; Wisconsin, Upper Michigan, Virginia, W. Virginia, Oklahoma and Texas.

(y) Minimum price wallboard and Plasterboard in straight cars shipped by rail to dealer's warehouse or nearest siding in Metropolitan New York—New Jersey Area (counties as listed), $2.00 per M less than prices applying to mixed and pool cars f.o.b. Oakfield, N. Y. This applies to New York City, also Westchester, Rockland, Nassau, and Suffolk counties, New York; also Hudson, Essex, Union, Bergen, Passaic, Morris, Middlesex, Mercer, Somerset, Monmouth, and Ocean counties, New Jersey.

On pool cars or mixed cars in this area, minimum quantity is 5000 sq. ft. of patented board shipped to one destination.

For delivered price to Kings county, New York, use lowest board rate from Oakfield, N. Y., to Brooklyn.

Straight or mixed cars board f.o.b. dealers siding in switching limits of Grand Rapids, Michigan, add $1.00 per M sq. ft. to prices applying f.o.b. cars, Grand Rapids mill.

(3) Delivered Carload Prices, Kansas City, Mo. and Suburbs: Board in straight or mixed cars delivered to following stations, price is same as f.o.b. cars delivered to Kansas City, Mo.; Dodson and Edgecomb, Mo.; Rosedale, Waldo, Argentine, Westport, and Kansas City, Kansas.

(4) Delivered Carload Prices, Cleveland, O. and Suburbs: Board in straight or mixed cars delivered to following stations, price is same as f.o.b. cars delivered in Cleveland, O.; Euclid, O.; North Randall, O.

(5) Century of Progress: Minimum prices to contractors, for gypsum wallboard, f.o.b. cars, Chicago, Illinois, Century of Progress siding, as follows:

3/8" Gypsum Wallboard ..... $31.82 per M sq. ft.

Tongue & Grooved, primed one coat in accordance with specifications as furnished for Electrical Building for Century of Progress Exhibition.

1/2" Gypsum Wallboard ..... $44.12 per M sq. ft.
1/2" Gypsum Wallboard, bent and formed at Mill, primed as above ..... 94.12 per M sq. ft.

(6) Metropolitan Detroit Area: Minimum price Wallboard and/or Plasterboard delivered by rail to dealer's warehouse or nearest railroad siding in straight, mixed, or pool cars; (also applies to carload deliveries by truck to one dealer's warehouse):

	Price
3/8" Gypsum Wallboard	$29.24
1/4" Gypsum Wallboard	25.97
1/2" Gypsum Wallboard	32.51
3/8" Tiled Gypsum Wallboard	52.24
3/8" Gypsum Plasterboard	17.24
1/4" Gypsum Plasterboard	16.47
1/2" Gypsum Plasterboard	19.26

Applies to Wayne county; and towns of Birmingham, Clawson, Farmington, Ferndale and Royal Oak in Oakland county; and Warren, Halfway, Fraser, Roseville and Centerline in Macomb County, Michigan.

(7) Metropolitan Chicago Area: Minimum price, deliveries by rail to dealer's warehouse or nearest railroad siding in straight, mixed or pool cars:

	In 30-Ton Minimum cars	In 20-Ton Minimum Cars
3/8" Gypsum Wallboard	$29.32	$29.80
1/4" Gypsum Wallboard	26.02	26.34
1/2" Gypsum Wallboard	32.62	33.26
3/8" Tiled Gypsum Wallboard	52.32	52.80
3/8" Gypsum Plasterboard	17.32	17.80
1/4" Gypsum Plasterboard	16.52	16.84
1/2" Gypsum Plasterboard	19.37	20.01

Applies to Cook and DuPage counties, Ill., Lake County, Indiana; also the following towns in Lake county, Illinois: Deerfield, Highland Park, and Lake Forest.

9741 (8) Allowances, etc.: The minimum price fixed by licensor for patented board and/or lath shall be the minimum net cost to licensee's customers and such net cost shall not be reduced below such minimum price or prices by or through allowance, payment or rebate to customers for use of railroad siding, for switching performed after car has been originally set for unloading, for warehousing, trucking or unloading, or other service by them in connection with shipments or deliveries of patented board and/or lath, or for stopover charges except that stopover charges need not be included in the minimum price in shipments to Michigan, Wisconsin, Illinois, Indiana, and Ohio. Nor shall such net cost to customer be reduced below such minimum price or prices by the establishment or continuance of warehouses with dealers or other buyers, or the extension of other than regular terms to any such dealer or buyer.

Very truly yours,

UNITED STATES GYPSUM COMPANY,

——— ———, *Vice-President.*

9742 UNITED STATES GYPSUM COMPANY.
300 West Adams Street
CHICAGO

FEBRUARY 4, 1933.

Board License Bulletin No. 1—Cancels Previous Bulletin No. 1—Carload Shipments

DEAR SIRS: Referring to our license contract with you, you are hereby notified that the minimum prices effective immediately, at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent); including Haggerty patent number 1,500,452 and Hite patent number 1,230,297, are as follows:

Delivered price is lowest combination of mill price plus freight (including surcharge) from that mill to destination. In stop-over cars delivered price for any part of car is C. L. delivered price as above defined to point of delivery of that part of car. In every case rates, surcharges and minimum weights as shown in published freight tariffs apply.

Prices f.o.b. cars:	3/8" Gypsum Wallboard (Wt. 1600 # per M)	1/4" Gypsum Wallboard (Wt. 1050 # per M)	1/2" Gypsum Wallboard (Wt. 2150 # per M)	3/4" Gypsum Wallboard (Wt. 3300 # per M)	3/8" Tiled Gypsum Wallboard (Wt. 1600 # per M)	3/8" Gypsum Plasterboard (Wt. 1600 # per M)	1/4" Gypsum Plasterboard (Wt. 1050 # per M)	1/2" Gypsum Plasterboard (Wt. 2150 # per M)
(y) Oakfield, N. Y.	27.00	24.50	29.50	35.00.	50.00	15.00	15.00	16.25
Plasterco, Va.	27.00	24.50z	29.50	— —	50.00	15.00	15.00	16.25
Gypsum, Ohio	27.00	24.50z	29.50	35.00	50.00	15.00	15.00	16.25
#Grand Rapids, Mich.	27.00	24.50z	29.50	— —	50.00	15.00	15.00	16.25
*Fort Dodge, Ia.	27.00	24.50z	29.50	35.00	50.00	15.00	15.00	16.25
*Southard, Okla.	27.00	24.50z	29.50x	35.00	50.00	15.00	15.00	16.25
*Sweetwater, Texas	27.00	24.50z	29.50x	— —	50.00	15.00	15.00	16.25
*Acme, Texas	27.00	24.50z	29.50x	— —	50.00	15.00	15.00	16.25
Laramie, Wyoming	33.00	29.00z	— —	— —	55.00	21.50	— —	— —
Loveland, Colo.	34.50	29.50z	39.50	— —	57.50	22.00	— —	— —

* In shipments from Fort Dodge, Iowa, Southard, Okla., Acme, or Sweetwater, Texas, into Arizona, New Mexico, Colorado, Wyoming, Utah, Oklahoma, Texas, Kansas, Missouri, Nebraska, S. Dakota, N. Dakota, Minnesota, Arkansas, Louisiana, Iowa, Upper Michigan, Wisconsin, use rates in effect prior to May 25, 1930, to arrive at delivered price; except where rates effective after May 25, 1930 are lower, use these rates.

Minimum prices for wallboard apply to 32" x 48" and 36" x 48" sizes shipped into this area, except where used for specific roof jobs, in which event plasterboard prices shall apply.

(Reference notes continued on following page)

9743 The above prices shall apply to the sale of all board embodying the claims of our patents in all markets except where an exception is made as hereinafter expressly stated:

(1) Minimum Price Cutstock Plasterboard to following counties: 1/4" and 3/8"—$12.50 per M sq. ft. f.o.b. cars, Oakfield, N. Y. for shipment to Niagara, Erie (including the portion of Gowanda, New York, in Cattaraugua County), Monroe, and Wayne counties, N. Y.†

Pickup price at Oakfield or delivered by truck to dealer's warehouse located in counties listed next above, $14.50 per M sq. ft. for 1/4" or 3/8" cutstock.

Pickup price at Buffalo warehouses, for destinations in counties listed in this paragraph, 1/4", $15.45 per M sq. ft.; 3/8", $15.94 per M sq. ft.

(2) Delivered Carload Prices, St. Louis, Mo. and Suburbs: Board in straight or mixed cars delivered to following stations, price is same as f.o.b. cars delivered in
9744 St. Louis: Ferguson, Kinlock, Overland, Brentwood, Kirkwood, Jennings, Wellston, Clayton, Webster Groves, Maplewood, Gravois Station, Old Orchard, and Lake Junction.

(3) Delivered Carload Prices, Kansas City, Mo. and Suburbs: Board in straight or mixed cars delivered to fol-

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(Reference notes continued from preceding page)

(x) 1/2" Wallboard $28.00 per M sq. ft. f.o.b. Sweetwater, Texas, Acme, Texas; or Southard, Oklahoma, for shipment into Oklahoma, Texas, Arkansas, Louisiana, New Mexico, and Arizona.

(z) Minimum prices 1/4" wallboard for shipment into following states, deduct $2.00 per M sq. ft. from mill prices shown on page 1: Montana, Wyoming, Colorado, Kansas, Nebraska, South Dakota, North Dakota, Minnesota, Iowa, Missouri, Arkansas, Kentucky, Tennessee, Mississippi, Alabama, Florida; Georgia, Louisiana; Wisconsin, Upper Michigan, Virginia, W. Virginia, Oklahoma, and Texas.

(y) Minimum price wallboard and Plasterboard in straight cars shipped by rail to dealer's warehouse or nearest siding in Metropolitan New York—New Jersey Area (counties as listed), $2.00 per M less than prices applying to mixed and pool cars f.o.b. Oakfield, N. Y. This applies to New York City, also Westchester, Rockland, Nassau, and Suffolk counties, New York; also Hudson, Essex, Union, Bergen, Passaic, Morris, Middlesex, Mercer, Somerset, Monmouth, and Ocean counties, New Jersey.

On pool cars or mixed cars in this area, minimum quantity is 5000 sq. ft. of patented board shipped to one destination.

For delivered price to Kings county, New York, use lowest board rate from Oakfield, N. Y., to Brooklyn.

Straight or mixed cars board f.o.b. dealers siding in switching limits of Grand Rapids, Michigan, add $1.00 per M sq. ft. to prices applying f.o.b. cars, Grand Rapids mill.

lowing stations, price is same as f.o.b. cars delivered to Kansas City, Mo.; Dodson and Edgecomb, Mo.; Rosedale, Waldo, Argentine, Westport, and Kansas City, Kansas.

(4) Delivered Carload Prices, Cleveland, O. and Suburbs: Board in straight or mixed cars delivered to following stations, price is same as f.o.b. cars delivered in Cleveland, O.; Euclid, O.; North Randall, O.

(5) Century of Progress: Minimum prices to contractors, for gypsum wallboard, f.o.b. cars, Chicago, Illinois, Century of Progress siding, as follows:

3/8" Gypsum Wallboard ..... $31.82 per M sq. ft.

Tongue & Grooved, primed one coat in accordance with specifications as furnished for Electrical Building for Century of Progress Exhibition.

1/2" Gypsum Wallboard ..... $44.12 per M sq. ft.
1/2" Gypsum Wallboard, bent and formed at Mill, primed as above ..... 94.12 per M sq. ft.

(6) Metropolitan Detroit Area: Minimum price Wallboard and/or Plasterboard delivered by rail to dealer's warehouse or nearest railroad siding in straight, mixed, or pool cars; (also applies to carload deliveries by truck to one dealer's warehouse):

	Price
3/8" Gypsum Wallboard	$29.24
1/4" Gypsum Wallboard	25.97
1/2" Gypsum Wallboard	32.51
3/8" Tiled Gypsum Wallboard	52.24
3/8" Gypsum Plasterboard	17.24
1/4" Gypsum Plasterboard	16.47
1/2" Gypsum Plasterboard	19.26

Applies to Wayne county; and towns of Birmingham, Clawson, Farmington, Ferndale and Royal Oak in Oakland county; and Warren, Halfway, Fraser, Roseville, and Centerline in Macomb County, Michigan.

(7) Pittsburgh, Pennsylvania and Suburbs: Minimum price delivered by rail to dealer's warehouse or nearest railroad siding in straight, mixed, or pool cars, Pittsburgh, Pennsylvania, and following suburbs: Aspinwall, Bellvue, Ben Avon, Braddock, Castle Shannon, East Liberty, Emsworth, Etna, Fairhaven, Hays, Homestead, McKees Rocks, Millvale, Munhall, Option, Rankin, Sharpsburg, West Homestead, West Liberty, Wilkinsburg.

3/8" Gypsum Wallboard	$29.80
1/4" Gypsum Wallboard	26.34
1/2" Gypsum Wallboard	33.26
3/8" Tiled Gypsum Wallboard	52.80
3/8" Gypsum Plasterboard	17.80
1/4" Gypsum Plasterboard	16.84
1/2" Gypsum Plasterboard	20.01

(8) Metropolitan Chicago Area: Minimum price, deliveries by rail to dealer's warehouse or nearest railroad siding in straight, mixed, or pool cars:

9745

	In 30-Ton Minimum cars	In 20-Ton Minimum Cars
3/8" Gypsum Wallboard	$29.32	$29.80
1/4" Gypsum Wallboard	26.02	26.34
1/2" Gypsum Wallboard	32.62	33.26
3/8" Tiled Gypsum Wallboard	52.32	52.80
3/8" Gypsum Plasterboard	17.32	17.80
1/4" Gypsum Plasterboard	16.52	16.84
1/2" Gypsum Plasterboard	19.37	20.01

Applies to Cook and DuPage counties, Ill., Lake County, Indiana; also the following towns in Lake county, Illinois; Deerfield, Highland Park, and Lake Forest.

(9) Baltimore, Maryland Suburbs: Delivered by rail to following stations minimum price is same as f.o.b. cars delivered in Baltimore, Maryland: Elkridge, Maryland, and Glen Burnie, Maryland.†

(10) Allowances, etc.: The minimum price fixed by licensor for patented board and/or lath shall be the minimum net cost to licensee's customers and such net cost shall not be reduced below such minimum price or prices by or through allowance, payment or rebate to customers for use of railroad siding, for switching performed after car has been originally set for unloading, for warehousing, trucking or unloading, or other service by them in connection with shipments or deliveries of patented board and/or lath, or for stopover charges except that stopover charges need not be included in the minimum price in shipments to Michigan, Wisconsin, Illinois, Indiana, and Ohio; also Davenport and Dubuque, Iowa. Nor shall such net cost to customer be reduced below such minimum price or prices by the establishment or continuance of warehouses with dealers or other buyers, or the extension of other than regular terms to any such dealer or buyer.†

(11) Dunnage: Gypsum boards used for dunnage, not invoiced to the customer, shall be plainly marked on the face side with visible red stamp or label firmly fixed on each of said boards showing the word "Dunnage" in letters at least three (3) inches high.†

Very truly yours,

UNITED STATES GYPSUM COMPANY,

_____ _____,

Vice-President.

9746 UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

MARCH 31, 1933.

Board License Bulletin No. 1—Cancels Previous Bulletin No. 1—Carload Shipments

DEAR SIRS: Referring to our license contract with you, you are hereby notified that the minimum prices effective immediately, at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent); including Haggerty patent number 1,500,452 and Hite patent number 1,230,297, are as follows:

Delivered price is lowest combination of mill price plus freight (including surcharge) from that mill to destination. In stop-over cars delivered price for any part of car is C. L. delivered price as above defined to point of delivery of that part of car. In every case rates, surcharges and minimum weights as shown in published freight tariffs apply.

Prices f.o.b. cars:	3/8" Gypsum Wallboard (Wt. 1600# per M)	1/4" Gypsum Wallboard (Wt. 1050# per M)	1/2" Gypsum Wallboard (Wt. 2150# per M)	3/4" Gypsum Wallboard (Wt. 3300# per M)	3/8" Tiled Gypsum Wallboard (Wt. 1600# per M)	3/8" Gypsum Plasterboard (Wt. 1600# per M)	1/4" Gypsum Plasterboard (Wt. 1050# per M)	1/2" Gypsum Plasterboard (Wt. 2150# per M)
(y) Oakfield, N. Y.	27.00	24.50	29.50	35.00	50.00	15.00	15.00	16.25
Plastereo, Va.	27.00	24.50z	29.50	— —	50.00	15.00	15.00	16.25
Gypsum, Ohio	27.00	24.50z	29.50	35.00	50.00	15.00	15.00	16.25
# Grand Rapids, Mich.	27.00	24.50z	29.50	— —	50.00	15.00	15.00	16.25
* Fort Dodge, Ia.	27.00	24.50z	29.50	35.00	50.00	15.00	15.00	16.25
* Southard, Okla.	27.00	24.50z	29.50x	35.00	50.00	15.00	15.00	16.25
* Sweetwater, Texas	27.00	24.50z	29.50x	— —	50.00	15.00	15.00	16.25
* Acme, Texas	27.00	24.50z	29.50x	— —	50.00	15.00	15.00	16.25
Laramie, Wyo.	33.00	29.00z	— —	— —	55.00	21.50	— —	— —
Loveland, Colo.	34.50	29.50z	39.50	— —	57.50	22.00	— —	— —

* In shipments from Fort Dodge, Iowa, Southard, Okla., Acme, or Sweetwater, Texas into Arizona, New Mexico, Colorado, Wyoming, Utah, Oklahoma, Texas, Kansas, Missouri, Nebraska, S. Dakota, N. Dakota, Minnesota, Arkansas, Louisiana, Iowa, Upper Michigan, Wisconsin, use rates in effect prior to May 25, 1930, to arrive at delivered price; except where rates effective after May 25, 1930 are lower, use these rates.

(*Reference notes continued on following page*)

9747 The above prices shall apply to the sale of all board embodying the claims of our patents in all markets except where an exception is made as hereinafter expressly stated:

†(1) 32″x48″ Gypsum Board: In all areas 32″x48″ gypsum board is subject to the minimum wallboard price except:

(a) Where used for specific roof jobs it is subject to minimum plasterboard price for such specific jobs.

(b) In states of Illinois, Indiana, Ohio, Pennsylvania, New York, New Jersey, Kentucky, West Virginia, and lower Michigan, 32″x48″ board, if grey surfaced and round edged, is subject to minimum plasterboard price.

†(2) 36″x48″ Gypsum Board: 36″x48″ is standard plasterboard size in all states for use on specific roof jobs only and is subject to plasterboard minimum price for such specific roof jobs.

†(3) Minimum Price Cutstock Plasterboard to following counties: 1/4″ and 3/8″—$12.50 per M sq. ft. f.o.b. cars, Oakfield, N. Y. for shipment to Niagara, Erie (including the portion of Gowanda, New York, in Cattaraugus county), Monroe, and Wayne counties, N. Y.

(*Reference notes continued from preceding page*)

(x) 1/2″ Wallboard $28.00 per M sq. ft. f.o.b. Sweetwater, Texas; Acme, Texas; or Southard, Oklahoma, for shipment into Oklahoma, Texas, Arkansas, Louisiana, New Mexico, and Arizona.

(z) Minimum prices 1/4″ wallboard for shipment into following states, deduct $2.00 per M sq. ft. from mill prices shown on page 1; Montana, Wyoming, Colorado, Kansas, Nebraska, South Dakota, North Dakota, Minnesota, Iowa, Missouri, Arkansas, Kentucky, Tennessee, Mississippi, Alabama, Florida, Georgia, Louisiana, Wisconsin, Upper Michigan, Virginia, W. Virginia, Oklahoma and Texas.

(y) Minimum price wallboard and Plasterboard in straight cars shipped by rail to dealer's warehouse or nearest siding in Metropolitan New York—New Jersey Area (Counties as listed), $2.00 per M less than prices applying to mixed and pool cars f.o.b. Oakfield, N. Y. This applies to New York City, also Westchester, Rockland, Nassau, and Suffolk Counties, New York; also Hudson, Essex, Union, Bergen, Passaic, Morris, Middlesex, Mercer, Somerset, Monmouth, and Ocean counties, New Jersey.

On pool cars or mixed cars in this area, minimum quantity is 5000 sq. ft. of patented board shipped to one destination.

For delivered price to Kings county, New York, use lowest board rate from Oakfield, N. Y., to Brooklyn.

Straight or mixed cars board f.o.b. dealers siding in switching limits of Grand Rapids, Michigan, add $1.00 per M sq. ft. to prices applying f.o.b. cars, Grand Rapids Mill.

Pickup price at Oakfield or delivered by truck to dealer's warehouse located in counties listed next above, $14.50† per M sq. ft. for 1/4" or 3/8" cutstock.

9748 Pickup price at Buffalo warehouses, for destinations in counties listed in this paragraph, 1/4" $15.45† per M sq. ft.; 3/8", $15.95† per M sq. ft.

† Note †: These prices do not apply to 32"x48" board. See Paragraph (1).

(4) Century of Progress: Minimum prices to contractors, for gypsum wallboard, f.o.b. cars, Chicago, Illinois, Century of Progress siding, as follows:

3/8" Gypsum Wallboard	$31.82 per M sq. ft.
†3/8" Gypsum Wallboard, bent and formed at mill (not primed)	81.82 per M sq. ft.

Tongue and Grooved, primed one coat in accordance with specifications as furnished for Electrical Building for Century of Progress Exhibition.

1/2" Gypsum Wallboard	44.12 per M sq. ft.
1/2" Gypsum Wallboard, bent and formed at mill, primed as above	94.12 per M sq. ft.

†Primed One Side: The above price for primed board covers priming one coat both sides and four edges. Price of same boards primed one side only, and four edges, is $2.75 per M sq. ft. less than minimum prices shown above.

(6) Dunnage: Gypsum boards used for dunnage, not invoiced to the customer, shall be plainly marked on the face side with visible red stamp or label firmly fixed on each of said boards showing the word "Dunnage" in letters at least three (3) inches high.

†(7) Delivered carload minimum prices in certain suburbs same as in city proper, as indicated below:

9749 *Delivered Carload Minimum Prices in—*	*Same as—*
†College Park, Ga.	Atlanta, Ga.
Elkridge, and Glen Burnie, Maryland	Baltimore, Md.
†Bristol, Tenn.	Bristol, Va.
†Cook and DuPage counties, Ill., Lake County, Indiana; also following towns in Lake County, Illinois; Deerfield, Highland Park, and Lake Forest.	Chicago, Ill. Use 14½¢ rate (this includes emergency charge) to figure minimum price in straight or mixed cars. This applies to 20-Ton cars or more.
†Cheviot & Bridgetown, O.	Cincinnati, O.
Euclid, O.; North Randall, O.	Cleveland, O.
Wayne county; and towns of Birmingham, Clawson, Farmington, Ferndale and Royal Oak in Oakland county; and Warren, Halfway, Fraser, Roseville, and Centerline in Macomb county, Michigan.	Detroit, Michigan
Dodson and Edgecomb, Mo.; Rosedale, Waldo, Argentine, Westport, and Kansas City, Kansas.	Kansas City, Mo.
Aspinwall, Bellvue, Ben Avon, Braddock, Castle Shannon, East Liberty, Emsworth, Etna, Fairhaven, Hays, Homestead, McKees Rocks, Millvale, Munhall, Option, Rankin, Sharpsburg, West Homestead, West Liberty, Wilkinsburg, Pa.	Pittsburgh, Pa. Use 17½¢ freight rate (this includes emergency charge) to figure minimum price in straight or mixed cars.
†South Windham, Maine	Portland, Maine
Ferguson, Kinlock, Overland, Brentwood, Kirkwood, Jennings, Wellston, Clayton, Webster Groves, Maplewood, Gravois Station, Old Orchard, and Lake Junction, Mo.	St. Louis, Mo.
†Armory & Indian Orchard, Mass.	Springfield, Mass.

Very truly yours,

UNITED STATES GYPSUM COMPANY,

_____,

Vice President.

† Indicates changes in this reissue.

9750

UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

MAY 3, 1933.

Board License Bulletin No. 1—Cancels Previous Bulletin No. 1—Carload Shipments

DEAR SIRS: Referring to our license contract with you, you are hereby notified that the minimum prices effective immediately, at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent); including Haggerty patent number 1,500,452 and Hite patent number 1,230,297, are as follows:

Delivered price is lowest combination of mill price plus freight (including surcharge) from that mill to destination. In stop-over cars delivered price for any part of car is C. L. delivered price as above defined to point of delivery of that part of car. In every case rates, surcharges and minimum weights as shown in published freight tariffs apply.

Prices f.o.b. cars:	3/8" Gypsum Wallboard (Wt. 1600# per M)	1/4" Gypsum Wallboard (Wt. 1050# per M)	1/2" Gypsum Wallboard (Wt. 2150# per M)	3/4" Gypsum Wallboard (Wt. 3300# per M)	3/8" Tiled Gypsum Wallboard (Wt. 1600# per M)	3/8" Gypsum Plasterboard (Wt. 1600# per M)	1/4" Gypsum Plasterboard (Wt. 1050# per M)	1/2" Gypsum Plasterboard (Wt. 2150# per M)
(y) Oakfield, N. Y.	27.00	24.50	29.50	35.00	50.00	15.00	15.00	16.25
Plasterco, Va.	27.00	24.50z	29.50	— —	50.00	15.00	15.00	16.25
Gypsum, Ohio	27.00	24.50z	29.50	35.00	50.00	15.00	15.00	16.25
# Grand Rapids, Mich.	27.00	24.50z	29.50	— —	50.00	15.00	15.00	16.25
* Fort Dodge, Ia.	27.00	24.50z	29.50	35.00	50.00	15.00	15.00	16.25
* Southard, Okla.	27.00	24.50z	29.50x	35.00	50.00	15.00	15.00	16.25
* Sweetwater, Texas	27.00	24.50z	29.50x	— —	50.00	15.00	15.00	16.25
* Acme, Texas	27.00	24.50z	29.50x	— —	50.00	15.00	15.00	16.25
Laramie, Wyo.	33.00	29.00z	— —	— —	55.00	21.50	— —	— —
Loveland, Colo.	34.50	29.50z	39.50	— —	57.50	22.00	— —	— —

* In shipments from Fort Dodge, Iowa, Southard, Okla., Acme, or Sweetwater, Texas into Arizona, New Mexico, Colorado, Wyoming, Utah, Oklahoma, Texas, Kansas, Missouri, Nebraska, S. Dakota, N. Dakota, Minnesota, Arkansas, Louisiana, Iowa, Upper Michigan, Wisconsin, use rates in effect prior to May 25, 1930, to arrive at delivered price; except where rates effective after May 25, 1930 are lower, use these rates.

(z) 1/2" Wallboard $28.00 per M sq. ft. f.o.b. Sweetwater, Texas; Acme, Texas; or Southard, Oklahoma, for shipment into Oklahoma, Texas, Arkansas, Louisiana, New Mexico, and Arizona.

(*Reference notes continued on following page*)

9751 The above prices shall apply to the sale of all board embodying the claims of our patents in all markets except where an exception is made as hereinafter expressly stated:

(1) 32"x48" Gypsum Board. In all areas 32"x48" gypsum board is subject to the minimum wallboard price except:

(a) Where used for specific roof jobs it is subject to minimum plasterboard price for such specific jobs.

(b) In states of Illinois, Indiana, Ohio, Pennsylvania, New York, New Jersey, Kentucky, West Virginia, and lower Michigan, 32"x48" board, if grey surfaced and round edged, is subject to minimum plasterboard price.

(2) 36"x48" Gypsum Board. 36"x48" is standard plasterboard size in all states for use on specific roof jobs only and is subject to plasterboard minimum price for such specific roof jobs.

(3) Minimum Price Cutstock Plasterboard‡ to following counties: 1/4" and 3/8"—$12.50‡ per M sq. ft. f.o.b. cars, Oakfield, N. Y. for shipment to Niagara, Erie (including the portion of Gowanda, New York, in Cattaraugus
9752 county), Monroe, and Wayne counties, N. Y.

Pickup price at Oakfield or delivered by truck to dealer's warehouse located in counties listed next above, $14.50‡ per M sq. ft. for 1/4" or 3/8" cutstock.

(Reference notes continued from preceding page)

(x) Minimum prices 1/4" wallboard for shipment into following states, deduct $2.00 per M sq. ft. from mill prices shown on page 1; Kansas, Nebraska, S. Dakota, No. Dakota, Minnesota, Iowa, Missouri, Arkansas, Kentucky, Tennessee, Mississippi, Alabama, Florida, Georgia, N. Carolina, S. Carolina, Louisiana, Wisconsin, Upper Michigan, Virginia, W. Virginia, Oklahoma and Texas.†
Deduct $4.50 per M sq. ft. from mill prices shown on page 1; Montana, Wyoming, Colorado, New Mexico, Idaho, Utah and Arizona.†

(y) Minimum price wallboard and Plasterboard in straight cars shipped by rail to dealer's warehouse or nearest siding in Metropolitan New York—New Jersey Area (Counties as listed), $2.00 per M less than prices applying to mixed and pool cars f.o.b. Oakfield, N. Y. This applies to New York City, also Westchester, Rockland, Nassau, and Suffolk Counties, New York; also Hudson, Essex, Union, Bergen, Passaic, Morris, Middlesex, Mercer, Somerset, Monmouth, and Ocean counties, New Jersey.
On pool cars or mixed cars in this area, minimum quantity is 5000 sq. ft. of patented board shipped to one destination.
For delivered price to Kings county, New York, use lowest board rate from Oakfield, N. Y., to Brooklyn.

Straight or mixed cars board f.o.b. dealers siding in switching limits of Grand Rapids, Michigan, add $1.00 per M sq. ft. to prices applying f.o.b. cars, Grand Rapids Mill.

Pickup price at Buffalo warehouses, for destinations in counties listed in this paragraph, 1/4", $15.45‡ per M sq. ft.; 3/8", $15.94‡ per M sq. ft.

Note ‡ : These prices do not apply to 32"x48" board. See Paragraph (1).

(4) Century of Progress: Minimum prices to contractors, for gypsum wallboard, f.o.b. cars, Chicago, Illinois, Century of Progress siding, as follows:

3/8" Gypsum Wallboard	$31.82 per M sq. ft.
3/8" Gypsum Wallboard, bent and formed at mill (not primed)	81.82 per M sq. ft.

Tongue and Grooved, primed one coat in accordance with specification as furnished for Electrical Building for Century of Progress Exhibition.

1/2" Gypsum Wallboard	44.12 per M sq. ft.
1/2" Gypsum Wallboard, bent and formed at mill, primed as above	94.12 per M sq. ft.

Primed One Side: The above price for primed board covers priming one coat both sides and four edges. Price of same boards primed one side only, and four edges, is $2.75 per M sq. ft. less than minimum prices shown above.

(5) Allowances, etc.: The minimum price fixed by licensor for patented board and/or lath shall not be reduced below such minimum price or prices by or through allowances, payment or rebate to customers for use of railroad siding, for switching performed after car has been originally set for unloading, (except in switching limits of Minneapolis and St. Paul, Minnesota, pool cars are permitted one switch at manufacturer's expense), for warehousing, trucking or unloading, or other service by them in connection with shipments or deliveries of patented board and/or lath, or for stop-over charges except that stopover charges need not be included in the minimum price in shipments to Michigan, Wisconsin, Illinois, Indiana, Ohio, Kansas, Missouri, Arkansas, Oklahoma, Iowa, Minnesota, North Dakota, and South Dakota. Nor shall such net cost to customer be reduced below such minimum price or prices by the establishment or continuance of warehouses with dealers or other buyers, or the extension of other than regular terms to any such dealer or buyer.

(6) Dunnage: Gypsum boards used for dunnage, not invoiced to the customer, shall be plainly marked on t...

face side with visible red stamp or label firmly fixed on each of said boards showing the word "Dunnage" in letters at least three (3) inches high.

(7) Delivered carload minimum prices in certain suburbs same as in city proper, as indicated below:

Delivered Carload Minimum Prices in—	*Same as—*
College Park, Ga.	Atlanta, Ga.
Elkridge, and Glen Burnie, Maryland	Baltimore, Md.
Bristol, Tenn.	Bristol, Va.
Cook and DuPage counties, Ill., Lake County, Indiana; also following towns in Lake County, Illinois: Deerfield, Highland Park, and Lake Forest.	Chicago, Ill. Use 14½¢ rate (this includes emergency charge) to figure minimum price in straight or mixed cars. This applies to 20-Ton cars or more.
9753 Cheviot & Bridgetown, O.	Cincinnati, O.
Euclid, O.; North Randall, O.	Cleveland, O.
Wayne county; and towns of Birmingham, Dawson, Farmington, Ferndale and Royal Oak in Oakland county; and Warren, Halfway, Fraser, Roseville, and Centerline in Macomb county, Michigan.	Detroit, Michigan
Dodson and Edgecomb, Mo.; Rosedale, Waldo, Argentine, Westport, and Kansas City, Kansas.	Kansas City, Mo.
Aspinwall, Bellvue, Ben Avon, Braddock, Castle Shannon, East Liberty, Emsworth, Etna, Fairhaven, Hays, Homestead, McKees Rocks, Millvale, Munhall, Option, Rankin, Sharpsburg, West Homestead, West Liberty, Wilkinsburg, Pa.	Pittsburgh, Pa. Use 17½¢ freight rate (this includes emergency charge) to figure minimum price in straight or mixed cars.
South Windham, Maine	Portland, Maine
Ferguson, Kinlock, Overland, Brentwood, Kirkwood, Jennings, Wellston, Clayton, Webster Groves, Maplewood, Gravois Station, Old Orchard, and Lake Junction, Mo.	St. Louis, Mo.
†Armory, Indian Orchard, and Oak Street, Mass.	Springfield, Mass.

Very truly yours,

UNITED STATES GYPSUM COMPANY,

_____,

Vice President.

† Indicates changes in this reissue.

9754 UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

SEPTEMBER 28, 1933.

Carload Shipments
Board License Bulletin No. 1—Cancels Previous Bulletin No. 1—Cancels All Previous Supplements—Except: Supplement Dated Sept. 5, 1933—Supplement Dated Oct. 24, 1932

DEAR SIRS: Referring to our license contract with you, you are hereby notified that the minimum prices effective midnight September 30, 1933, at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent); including Haggerty patent number 1,500,452 and Hite patent number 1,230,297, are as follows:

Delivered price is lowest combination of mill price plus freight (including surcharge) from that mill to destination. In stop over cars delivered price for any part of car is C. L. delivered price as above defined to point of delivery of that part of car. In every case rates and minimum weights as shown in published railroad freight tariffs apply.

Prices f.o.b. cars:	3/8" Gypsum Wallboard (Wt. 1600 # per M)	1/4" Gypsum Wallboard (Wt. 1050 # per M)	1/2" Gypsum Wallboard (Wt. 2150 # per M)	3/4" Gypsum Wallboard (Wt. 3300 # per M). See Note **	3/8" Tiled Gypsum Wallboard (Wt. 1600 # per M)	3/8" Gypsum Plasterboard (Wt. 1600 # per M)	1/4" Gypsum Plasterboard (Wt. 1050 # per M)	1/2" Gypsum Plasterboard (Wt. 2150 # per M)
(y) Oakfield, N. Y.	27.00	24.50	29.50	35.00	50.00	15.00	15.00	16.25
Plasterco, Va.	27.00	24.50z	29.50	— —	50.00	15.00	15.00	16.25
Gypsum, Ohio	27.00	24.50z	29.50	35.00	50.00	15.00	15.00	16.25
# Grand Rapids, Mich.	27.00	24.50z	29.50	— —	50.00	15.00	15.00	16.25
* Fort Dodge, Ia.	27.00	24.50z	29.50	35.00	50.00	15.00	15.00	16.25
* Southard, Okla.	27.00	24.50z	29.50x	35.00	50.00	15.00	15.00	16.25
* Sweetwater, Texas	27.00	24.50z	29.50x	— —	50.00	15.00	15.00	16.25
* Acme, Texas	27.00	24.50z	29.50x	— —	50.00	15.00	15.00	16.25
Laramie, Wyo.	33.00	29.00z	— —	— —	55.00	21.50	— —	— —
Loveland, Colo.	34.50	29.50z	39.50	— —	57.50	22.00	— —	— —

* In shipments from Fort Dodge, Iowa, Southard, Okla., Acme, or Sweetwater, Texas into Arizona, New Mexico, Colorado, Wyoming, Utah, Oklahoma, Texas, Kansas, Missouri, Nebraska, S. Dakota, N. Dakota, Minnesota, Arkansas, Louisiana, Iowa, Upper Michigan, Wisconsin, use rates in effect prior to May 25, 1930, to arrive at delivered price; except where rates effective after May 25, 1930 are lower, use these rates.

9755 The above prices shall apply to the sale of all board embodying the claims of our patents in all markets except where an exception is made as hereinafter expressly stated:

(1) 32″x48″ Gypsum Board. In all areas 32″x48″ gypsum board is subject to the minimum wallboard price except:

(a) Where used for specific roof jobs it is subject to minimum plasterboard price for such specific jobs.

(b) In states of Illinois, Indiana, Ohio, Pennsylvania, New York, New Jersey, Kentucky, West Virginia, and lower Michigan, 32″x48″ board, if grey surfaced and round edged, is subject to minimum plasterboard price.

(2) 36″x48″ Gypsum Board. 36″x48″ is standard plasterboard size in all states to gypsum roof contractors for use on specific gypsum roof jobs only and is subject to plasterboard minimum price for such specific gypsum roof jobs.†

(3) Minimum Price Cutstock Plasterboard‡ to following counties: 1/4″ and 3/8″—$12.50‡ per M sq. ft. f.o.b. cars, Oakfield, N. Y. for shipment to Niagara, Erie (in-

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** 3/4″ Gypsum Plasterboard $20.00 per M sq. ft. f.o.b. same mills as shown for 3/4″ Gypsum Wallboard. Weight 3300# per M sq. ft.†

(x) 1/2″ Wallboard $28.00 per M sq. ft. f.o.b. Sweetwater, Texas; Acme, Texas; or Southard, Oklahoma, for shipment into Oklahoma, Texas, Arkansas, Louisiana, New Mexico, and Arizona.

(z) Minimum prices 1/4″ wallboard for shipment into following states, deduct $2.00 per M sq. ft. from mill prices shown on page 1; Kansas, Nebraska, S. Dakota, No. Dakota, Minnesota, Iowa, Missouri, Arkansas, Kentucky, Tennessee, Mississippi, Alabama, Florida, Georgia, N. Carolina, S. Carolina, Louisiana, Wisconsin, Upper Michigan, Virginia, W. Virginia, Oklahoma and Texas.

Deduct $4.50 per M sq. ft. from mill prices shown on page 1 for shipments into following states; Montana, Wyoming, Colorado, New Mexico, Idaho, Utah and Arizona.

(y) Minimum price wallboard and Plasterboard in straight cars shipped by rail to dealer's warehouse or nearest siding in Metropolitan New York—New Jersey Area (Counties as listed), $2.00 per M less than prices applying to mixed and pool cars f.o.b. Oakfield, N. Y. This applies to New York City, also Westchester, Rockland, Nassau, and Suffolk Counties, New York; also Hudson, Essex, Union, Bergen, Passaic, Morris, Middlesex, Mercer, Somerset, Monmouth, and Ocean counties, New Jersey.

On pool cars or mixed cars in this area, minimum quantity is 5000 sq. ft. of patented board shipped to one destination.

Straight or mixed cars board f.o.b. dealers siding in switching limits of Grand Rapids, Michigan, add $1.00 per M sq. ft. to prices applying f.o.b. cars, Grand Rapids Mill.

cluding the portion of Gowanda, New York, in Cat-
9756 taraugus county), Monroe, and Wayne counties, N. Y.

Pickup price at Oakfield or delivered by truck to dealer's warehouse located in counties listed next above, $14.50‡ per M sq. ft. for 1/4" or 3/8" cutstock.

Pickup price at Buffalo warehouses, for destinations in counties listed in this paragraph, 1/4", $15.34‡ per M sq. ft.; 3/8", $15.78‡ per M sq. ft.†

Note ‡ : These prices do not apply to 32"x48" board. See Paragraph (1).

(4) Century of Progress: Minimum prices to contractors, for gypsum wallboard, f.o.b. cars, Chicago, Illinois, Century of Progress siding, as follows:

3/8" Gypsum Wallboard	$31.58 per M sq. ft.†
3/8" Gypsum Wallboard, bent and formed at mill (not primed)	81.58 per M sq. ft.†

Tongue and Grooved, primed one coat in accordance with specification as furnished for Electrical Building for Century of Progress Exhibition.

1/2" Gypsum Wallboard	$43.80 per M sq. ft.†
1/2" Gypsum Wallboard, bent and formed at mill, primed as above	93.80 per M sq. ft.†

Primed One Side: The above price for primed board covers priming one coat both sides and four edges. Price of same boards primed one side only, and four edges, is $2.75 per M sq. ft. less than minimum prices shown above.

(5) Allowances, etc.: The minimum price fixed by licensor for patented board and/or lath shall not be reduced below such minimum price or prices by or through allowances, payment or rebate to customers for use of railroad siding, for switching performed after car has been originally set for unloading; for warehousing, trucking or unloading, or other service by them in connection with shipments or deliveries of patented board and/or lath, or for stop-over charges except that stop-over charges need not be included in the minimum price in shipments to Michigan, Wisconsin, Illinois, Indiana, Ohio, Kansas, Missouri, Arkansas, Oklahoma, Iowa, Minnesota, North Dakota, South Dakota, Texas, and Nebraska. Nor shall such net cost to customer be reduced below such minimum price or prices by the establishment or continuance of warehouses with dealers or other buyers, or the extension of other than reg-

ular terms to any such dealer or buyer. Quotations deducting the regular cash discount so that the quoted price is less than the minimum price to the licensee, are considered as quotations to sell at less than the minimum price and therefore in violation of the license agreement. On quotations to U. S. Government regular minimum delivered price less 2% of delivered price (cash discount) shall be the minimum price.

(6) Dunnage: Gypsum boards used for dunnage, not invoiced to the customer, shall be plainly marked on the face side with visible red stamp or label firmly fixed on each of said boards showing the word "Dunnage" in letters at least three (3) inches high.

(7) Delivered carload minimum prices in certain suburbs same as in city proper, as indicated below:

Delivered Carload Minimum Prices in—	*Same as—*
College Park, Ga.	Atlanta, Ga.
Elkridge, and Glen Burnie, Maryland	Baltimore, Md.
Bristol, Tenn.	Bristol, Va.
9757 Cook and DuPage counties, Ill., Lake County, Indiana; also following towns in Lake County, Illinois: Deerfield, Highland Park, and Lake Forest.	†Chicago, Ill. Use 13¢ rate to figure minimum price in straight or mixed cars. This applies to 20-Ton cars or more.
Cheviot & Bridgetown, O.	Cincinnati, O.
Euclid, O.; North Randall, O.	Cleveland, O.
Wayne county; and towns of Birmingham, Clawson, Farmington, Ferndale and Royal Oak in Oakland county; and Warren, Halfway, Fraser, Roseville, and Centerline in Macomb county, Michigan.	Detroit, Michigan
Dodson and Edgecomb, Mo.; Rosedale, Waldo, Argentine, Westport, and Kansas City, Kansas.	Kansas City, Mo.
Kings County, N. Y.	†Brooklyn, N. Y.
South Windham, Maine	Portland, Maine
Ferguson, Kinlock, Overland, Brentwood, Kirkwood, Jennings, Wellston, Clayton, Webster Groves, Maplewood, Gravois Station, Old Orchard, and Lake Junction, Mo.	St. Louis, Mo.
Armory, Indian Orchard, and Oak Street, Mass.	Springfield, Mass.

Very truly yours,

UNITED STATES GYPSUM COMPANY,

_____,

Vice President.

† Indicates changes in this reissue.

9758 UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

APRIL 10, 1934.

Carload Shipments
Board License Bulletin No. 1—Cancels Bulletin No. 1, Dated Sept. 28, 1933—Cancels All Previous Supplements Except Supplement Dated Oct. 24, 1932 and Supplement Dated March 14, 1934

DEAR SIRS: Referring to our license contract with you, you are hereby notified that the minimum prices effective April 25, 1934, at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent); including Haggerty patent number 1,500,452 and Hite patent number 1,230,297, are as follows:

Delivered price is lowest combination of mill price plus freight from that mill to destination. In stop-over cars delivered price for any part of car is C. L. delivered price as above defined to point of delivery of that part of car. In every case rates and minimum weights as shown in published railroad freight tariffs apply.

Prices f.o.b. cars:	⅜" Gypsum Wallboard (Wt. 1600# per M)	¼" Gypsum Wallboard (Wt. 1050# per M)	½" Gypsum Wallboard (Wt. 2150# per M)	¾" Gypsum Wallboard (Wt. 3300# per M) See Note **	⅜" Tiled Gypsum Wallboard (Wt. 1600# per M)	⅜" Gypsum Plasterboard (Wt. 1600# per M)	¼" Gypsum Plasterboard (Wt. 1050# per M)	½" Gypsum Plasterboard (Wt. 2150# per M)
†(y) Oakfield, N. Y.	28.50	24.50	31.00	36.50	50.00	15.00	15.00	16.25
† Plasterco, Va.	28.50	24.50	31.00	— —	50.00	15.00	15.00	16.25
† Gypsum, Ohio	28.50	24.50	31.00	36.50	50.00	15.00	15.00	16.25
† #Grand Rapids, Mich.	28.50	24.50	31.00	— —	50.00	15.00	15.00	16.25
† * Fort Dodge, Ia.	28.50	24.50z	31.00	36.50	50.00	15.00	15.00	16.25
† * Southard, Okla.	28.50	24.50z	31.00x	36.50	50.00	15.00	15.00	16.25
† * Sweetwater, Tex.	28.50	24.50z	31.00x	— —	50.00	15.00	15.00	16.25
† * Acme, Texas	28.50	24.50z	31.00x	— —	50.00	15.00	15.00	16.25
† Laramie, Wyo.	34.50	31.00z	— —	— —	55.00	21.50	— —	— —
† Loveland, Colo.	36.00	31.50z	41.00	— —	57.50	22.00	— —	— —

* In shipments from Fort Dodge, Iowa, Southard, Okla., Acme, or Sweetwater, Texas into Arizona, New Mexico, Colorado, Wyoming, Utah, Oklahoma, Texas, Kansas, Missouri, Nebraska, S. Dakota, N. Dakota, Minnesota, Arkansas, Louisiana, Iowa, Upper Michigan, Wisconsin, use rates in effect prior to May 25, 1930, to arrive at delivered price; except where rates effective after May 25, 1930 are lower, use these rates.

(Reference notes continued on following page)

9759 The above prices apply to the sale of all board embodying the claims of our patents in all markets except where an exception is made as hereinafter expressly stated:

(1) 32"x48" Gypsum Board. In all areas 32"x48" gypsum board is subject to the minimum wallboard price except:

(a) Where used for specific roof jobs it is subject to minimum plasterboard price for such specific jobs.

(b) In states of Illinois, Indiana, Ohio, Pennsylvania, New York, New Jersey, Kentucky, West Virginia, and Lower Michigan, 32"x48" board, if grey surfaced and round edged, is subject to minimum plasterboard price.

(2) 36"x48" Gypsum Board. 36"x48" is standard plasterboard size in all states to gypsum roof contractors for use on specific gypsum roof jobs only and is subject to plasterboard minimum price for such specific gypsum roof jobs.

(3) Minimum Price Cutstock Plasterboard for shipment to Niagara, Erie (including the portion of Gowanda, New York, in Cattaraugus county), Monroe, and Wayne counties, N. Y.:

1/4" and 3/8"—$12.50 per M sq. ft. f.o.b. cars Oakfield, N. Y.

1/4" and 3/8"—$14.50 per M sq. ft. delivered by truck or picked up at Oakfield, N. Y.

(*Reference notes continued from preceding page*)

** 3/4" Gypsum Plasterboard $20.00 per M sq. ft. f.o.b. same mills as shown for 3/4" Gypsum Wallboard. Weight 3300# per M sq. ft.

†(x) 1/2" Wallboard, $29.50 per M sq. ft. f.o.b. Sweetwater, Texas; Acme, Texas; or Southard, Oklahoma, for shipment into Oklahoma, Texas, Arkansas, Louisiana, New Mexico, and Arizona.

†(z) Minimum prices 1/4" wallboard for shipment into following states, deduct $2.00 per M sq. ft. from mill prices shown on page 1: Montana, Wyoming, Colorado, New Mexico, Idaho, Utah and Arizona.

(y) Minimum price wallboard and Plasterboard in straight cars shipped by rail to dealer's warehouse or nearest siding into following counties in Metropolitan New York—New Jersey area $2.00 per M less than prices applying to mixed and pool cars f.o.b. Oakfield, N. Y.; Manhattan, Bronx, Kings, Queens, Richmond, Westchester, Rockland, Nassau, and Suffolk counties, New York; Hudson, Essex, Union, Bergen, Passaic, Morris, Middlesex, Mercer, Somerset, Monmouth, and Ocean counties, New Jersey.

On pool cars or mixed cars in this area, minimum quantity is 5000 sq. ft. of patented board shipped to one destination.

Straight or mixed cars board f.o.b. dealers siding in switching limits of Grand Rapids, Michigan, add $1.00 per M sq. ft. to prices applying f.o.b. cars, Grand Rapids Mill.

9760 Pickup price on regular plasterboard at Buffalo warehouses, for destinations in counties listed in this paragraph: 1/4"—$15.34 per M sq. ft.; 3/8"—$15.78 per M sq. ft.

Note: These prices do not apply to 32"x48" board. See Paragraph (1).

(4) Century of Progress: Minimum prices to contractors, for gypsum wallboard, f.o.b. cars, Chicago, Illinois, Century of Progress siding, as follows:

†3/8" Gypsum wallboard	$33.08 per M sq. ft.
†3/8" Gypsum wallboard, bent and formed at mill (not primed)	83.08 per M sq. ft.

Tongue and Grooved, primed one coat in accordance with specification as furnished for Electrical Building for Century of Progress Exhibition.

†1/2" Gypsum wallboard	$45.30 per M sq. ft.
†1/2" Gypsum wallboard, bent and formed at mill, primed as above	95.30 per M sq. ft.

Primed One Side; The above price for primed board covers priming one coat both sides and four edges. Price of same boards primed one side only, and four edges, is $2.75 per M sq. ft. less than minimum prices shown above.

(5) Allowances, Etc.: The minimum price fixed by licensor for patented board and/or lath shall not be reduced below such minimum price or prices by or through allowances, payment or rebate to customers for use of railroad siding, for switching performed after car has been originally set for unloading; for warehousing, trucking or unloading, or other service by them in connection with shipments or deliveries of patented board and/or lath, or for stop-over charges except that stop-over charges need not be included in the minimum price in shipments to Michigan, Wisconsin, Illinois, Indiana, Ohio, Kansas, Missouri, Arkansas, Oklahoma, Iowa, Minnesota, North Dakota, South Dakota, Texas, and Nebraska. Nor shall such net cost to customer be reduced below such minimum price or prices by the establishment or continuance of warehouses with dealers or other buyers, or the extension of other than regular terms to any such dealer or buyer. Quotations deducting the regular cash discount so that the quoted price is less than the minimum price to the licensee, are considered as quotations to sell at less than the minimum price and therefore in violation of the license agreement.

On quotations to U. S. Government regular minimum delivered price less 2% of delivered price (cash discount) shall be the minimum price.

(6) Dunnage: Gypsum boards used for dunnage, not invoiced to the customer, shall be plainly marked on the face side with visible red stamp or label firmly fixed on each of said boards showing the word "Dunnage" in letters at least three (3) inches high.

(7) Delivered carload minimum prices in certain suburbs same as in city proper, as indicated below:

Delivered Carload Minimum Prices in—	*Same as—*
College Park, Ga.	Atlanta, Ga.
Elkridge, and Glen Burnie, Maryland	Baltimore, Md.
Bristol, Tenn.	Bristol, Va.
9761 Cook and DuPage counties, Ill., Lake County, Indiana; also following towns in Lake County, Illinois: Deerfield, Highland Park, and Lake Forest.	Chicago, Ill. Use 13¢ rate to figure minimum price on straight or mixed cars. This applies to 20-Ton cars or more.
Cheviot & Bridgetown, O.	Cincinnati, O.
Euclid, O.; North Randall, O.	Cleveland, O.
Wayne county; and towns of Birmingham, Clawson, Farmington, Ferndale and Royal Oak, in Oakland county; and Warren, Halfway, Fraser, Roseville, and Centerline in Macomb county, Michigan.	Detroit, Michigan.
Dodson and Edgecomb, Mo.; Rosedale, Waldo, Argentine, Westport, and Kansas City, Kansas	Kansas City, Mo.
Kings County, N. Y.	Brooklyn, N. Y.
South Windham, Maine	Portland, Maine
Ferguson, Kinlock, Overland, Brentwood, Kirkwood, Jennings, Wellston, Clayton, Webster Groves, Maplewood, Gravois Station, Old Orchard, and Lake Junction, Mo.	St. Louis, Mo.
Armory, Indian Orchard, and Oak Street, Mass.	Springfield, Mass.
†Arlington Siding, N. Y.	Poughkeepsie, N. Y.

Very truly yours,

UNITED STATES GYPSUM COMPANY,

_____,

Vice President.

† Indicates changes in this reissue.

9762 UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

MAY 25, 1934.

Carload Shipments
Board License Bulletin No. 1—Cancels Bulletin No. 1, Dated April 10, 1934

†DEAR SIRS: Referring to our license contract with you, you are hereby notified that the minimum prices effective May 31, 1934, at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent); including Haggerty patent number 1,500,452 and Hite patent number 1,230,297, are as follows:

Delivered price is lowest combination of mill price plus freight from that mill to destination. On stop-over cars delivered price for any part of car is carload delivered price as above defined to point of delivery of that part of car. In every case rates and minimum weights as shown in published railroad freight tariffs apply.

Prices f.o.b. cars;	⅜" Gypsum Wallboard (Wt. 1600 # per M)	½" Gypsum Wallboard (Wt. 1050 # per M)	½" Gypsum Wallboard (Wt. 2150 # per M)	⅝" Gypsum Wallboard (Wt. 3300 # per M) See Note **	3/8" Tiled Gypsum Wallboard (Wt. 1600 # per M)	⅜" Gypsum Plasterboard (Wt. 1600 # per M)	½" Gypsum Plasterboard (Wt. 1050 # per M)	½" Gypsum Plasterboard (Wt. 2150 # per M)	3/8" Perforated Gypsum Plasterboard (Wt. 1600 # per M)
(y). Oakfield, N. Y.	28.50	24.50	31.00	36.50	50.00	15.00	15.00	16.25	17.50
Plasterco, Va.	28.50	24.50	31.00	— —	50.00	15.00	15.00	16.25	— —
Gypsum, Ohio	28.50	24.50	31.00	36.50	50.00	15.00	15.00	16.25	— —
‡ Grand Rapids, Mich.	28.50	24.50	31.00	— —	50.00	15.00	15.00	16.25	— —
* Fort Dodge, Iowa	28.50	24.50z	31.00	36.50	50.00	15.00	15.00	16.25	— —
* Southard, Okla.	28.50	24.50z	31.00x	36.50	50.00	15.00	15.00	16.25	— —
* Sweetwater, Tex.	28.50	24.50z	31.00x	— —	50.00	15.00	15.00	16.25	— —
* Acme, Texas	28.50	24.50z	31.00x	— —	50.00	15.00	15.00	16.25	— —
† Laramie, Wyo.	34.50	29.00z	— —	— —	55.00	21.50	— —	— —	— —
† Loveland, Colo.	36.00	29.50z	41.00	— —	57.50	22.00	— —	— —	— —

* In shipments from Fort Dodge, Iowa, Southard, Okla., Acme, or Sweetwater, Texas into Arizona, New Mexico, Colorado, Wyoming, Utah, Oklahoma, Texas, Kansas, Missouri, Nebraska, S. Dakota, N. Dakota, Minnesota, Arkansas, Louisiana, Iowa, Upper Michigan, Wisconsin, use rates in effect prior to May 25, 1930, to arrive at delivered price; except where rates effective after May 25, 1930 are lower, use these rates.

(*Reference notes continued on following page*)

9763 The above prices apply to the sale of all board embodying the claims of our patents in all markets except where an exception is made as hereinafter expressly stated:

(1) 32"x48" Gypsum Board. In all areas 32"x48" gypsum board is subject to the minimum wallboard price except:

(a) Where used for specific roof jobs it is subject to minimum plasterboard price for such specific jobs.

(b) In States of Illinois, Indiana, Ohio, Pennsylvania, New York, New Jersey, Kentucky, West Virginia, and Lower Michigan, 32"x48" board, if grey surfaced and round edged, is subject to minimum plasterboard price.

(2) 36"x48" Gypsum Board. 36"x48" is standard plasterboard size in all States to gypsum roof contractors for use on specific gypsum roof jobs only and is subject to plasterboard minimum price for such specific gypsum roof jobs.

†(3) Minimum Price Cutstock Plasterboard for shipment to Niagara, Erie (including the town of Gowanda, New York) Monroe and Wayne Counties, N. Y.:

1/4" and 3/8"—$12.50 per M sq. ft. f.o.b. cars Oakfield, N. Y.

1/4" and 3/8"—$14.50 per M sq. ft. delivered by truck or picked up at Oakfield, N. Y.

(*Reference notes continued from preceding page*)

** 3/4" Gypsum Plasterboard $20.00 per M sq. ft. f.o.b. same mills as shown for 3/4" Gypsum Wallboard. Weight 3300# per M sq. ft.

(x) 1/2" Wallboard, $29.50 per M sq. ft. f.o.b. Sweetwater, Texas; Acme, Texas; or Southard, Oklahoma, for shipment into Oklahoma, Texas, Arkansas, Louisiana, New Mexico, and Arizona.

(z) Minimum prices 1/4" wallboard for shipment into following states, deduct $2.00 per M sq. ft. from mill prices shown on page 1: Montana, Wyoming, Colorado, New Mexico, Idaho, Utah and Arizona.

(y) Minimum price wallboard and Plasterboard in straight cars shipped by rail to dealer's warehouse or nearest siding into following counties in Metropolitan New York—New Jersey area $2.00 per M less than prices applying to mixed and pool cars f.o.b. Oakfield, N. Y.: Manhattan, Bronx, Kings, Queens, Richmond, Westchester, Rockland, Nassau, and Suffolk counties, New York; Hudson, Essex, Union, Bergen, Passaic, Morris, Middlesex, Mercer, Somerset, Monmouth, and Ocean counties, New Jersey.

On pool cars or mixed cars in this area, minimum quantity is 5000 sq. ft. of patented board shipped to one destination.

Straight or mixed cars board f.o.b. dealers siding in switching limits of Grand Rapids, Michigan, add $1.00 per M sq. ft. to prices applying f.o.b. cars, Grand Rapids Mill.

NOTE:—These prices do not apply to 32"x48" board. See Paragraph (1).

9764 (4) Century of Progress: Minimum prices to contractors, for gypsum wallboard, f.o.b. cars, Chicago, Illinois, Century of Progress siding, as follows:

3/8" Gypsum Wallboard	$33.08 per M sq. ft.
3/8" Gypsum Wallboard, bent and formed at mill (not primed)	83.08 per M sq. ft.

Tongue and Grooved, primed one coat in accordance with specification as furnished for Electrical Building for Century of Progress Exhibition.

1/2" Gypsum Wallboard	$45.30 per M sq. ft.
1/2" Gypsum Wallboard, bent and formed at mill, primed as above	95.30 per M sq. ft.

Primed One Side: The above price for primed board covers priming one coat both sides and four edges. Price of same boards primed one side only, and four edges, is $2.75 per M sq. ft. less than minimum prices shown above.

(5) Allowances, Etc.: The minimum price fixed by licensor for patented board and/or lath shall not be reduced below such minimum price or prices by or through allowances, payment or rebate to customers for use of railroad siding, for switching performed after car has been originally set for unloading; for warehousing, trucking or unloading, or other service by them in connection with shipments or deliveries of patented board and/or lath, or for stop-over charges. Nor shall such net cost to customer be reduced below such minimum price or prices by the establishment or continuance of warehouses with dealers or other buyers, or the extension of other than regular terms to any such dealer or buyer. Quotations deducting the regular cash discount so that the quoted price is less than the minimum price to the licensee, are considered as quotations to sell at less than the minimum price and therefore in violation of the license agreement. On quotations to U. S. Government regular minimum delivered price less 2% of delivered price (cash discount) shall be the minimum price.

(6) Dunnage: Gypsum boards used for dunnage and not invoiced to the customer shall be not larger than 4'x4' and any gypsum boards so used with any dimen-

sion greater than 12" shall be plainly stamped in red on the face side of each board, showing the words "Dunnage—Not to Be Sold" in letters at least 3" high. Excessive tonnage is a violation of the license agreement.

(7) Delivered carload minimum prices in certain suburbs same as in city proper, as indicated below:

Delivered Carload Minimum Prices in—	*Same as—*
College Park, Ga.	Atlanta, Ga.
Elkridge, and Glen Burnie, Maryland.	Baltimore, Md.
Bristol, Tenn.	Bristol, Va.
9765 †Cook and DuPage counties, Ill., Lake County, Indiana; also following towns in Lake County, Illinois: Deerfield, Highland Park, and Lake Forest.	Chicago, Ill.
Cheviot & Bridgetown, O.	Cincinnati, O.
†Euclid, North Randall and Bedford, O.	Cleveland, O.
Wayne county; and towns of Birmingham, Clawson, Farmington, Ferndale and Royal Oak, in Oakland county; and Warren, Halfway, Fraser, Roseville, and Centerline in Macomb county, Michigan.	Detroit, Michigan
Dodson and Edgecomb, Mo.; Rosedale, Waldo, Argentine, Westport, and Kansas City, Kansas.	Kansas City, Mo.
Kings County, N. Y..	Brooklyn, N. Y.
Ferguson, Kinlock, Overland, Brentwood, Kirkwood, Jennings, Wellston, Clayton, Webster Groves, Maplewood, Gravois Station, Old Orchard, and Lake Junction, Mo.	St. Louis, Mo.

Very truly yours,

UNITED STATES GYPSUM COMPANY,

_____ _____,

Vice President.

† Indicates change in this reissue.

9766 UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

SEPTEMBER 16, 1935.

Carload Shipments
Board License Bulletin No. 1—Cancels Bulletin No. 1, Dated May 25, 1934—and all Supplements Thereto

E. S. PITTS

DEAR SIRS: Referring to our license contract with you, you are hereby notified that the minimum prices at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent); including Haggerty patent number 1,500,452 and Hite patent number 1,230,297, are as follows:

†Patented products shall be quoted and sold on a delivered basis, f.o.b. cars destination. Delivered price is lowest combination of mill price plus freight, including emergency freight charge (see page 2) from that mill to destination. In stopover cars delivered price for any part of car is carload delivered price as above defined to point of delivery of that part of car. In every case rates as shown in published railroad freight tariffs apply. To determine board footage required to meet straight or mixed carload minimum weights, as shown in published railroad freight tariffs, use weights per M sq. ft. as shown below.

Dealer Prices f.o.b. cars: (Applying for standard sizes as listed in Bulletin No. 4),	¼" Gypsum Wallboard (Wt. 950# per M)	5/16" Gypsum Wallboard (Wt. 1175# per M) See Note *	⅜" Gypsum Wallboard (Wt. 1400M per M)	½" Gypsum Wallboard (Wt. 1900# per M)	¾" Gypsum Wallboard (Wt. 3300# per M)	⅜" Tiled Gypsum Wallboard (Wt. 1400# per M)	¼" Gypsum Plasterboard (Wt. 950# per M)	⅜" Gypsum Plasterboard (Wt. 1400# per M)	½" Gypsum Plasterboard (Wt. 1900# per M)	¾" Gypsum Plasterboard (Wt. 3300# per M)
Acme, Tex.	22.50	— —	28.50	31.00	— —	50.00	15.00	15.00	16.25	— —
Fort Dodge, Iowa	22.50	— —	28.50	31.00	36.50	50.00	15.00	15.00	16.25	20.00
Grand Rapids, Mich.	22.50	— —	28.50	31.00	— —	50.00	15.00	15.00	16.25	— —
Gypsum, Ohio	22.50	26.50	28.50	31.00	36.50	50.00	15.00	15.00	16.25	20.00
Laramie, Wyo.	26.75	— —	34.75	— —	— —	56.25	— —	21.25	— —	— —
Loveland, Colo.	26.50	— —	34.50	39.00	— —	56.00	— —	21.00	— —	— —
Oakfield, N. Y.	22.50	26.50	28.50	31.00	36.50	50.00	15.00	15.00	16.25	20.00
Plasterco, Va.	22.50	— —	28.50	31.00	— —	50.00	15.00	15.00	16.25	— —
Southard, Okla.	22.50	— —	28.50	31.00	36.50	50.00	15.00	15.00	16.25	20.00
Sweetwater, Tex.	22.50	— —	28.50	31.00	— —	50.00	15.00	15.00	16.25	— —

* 5/16" Gypsum Wallboard is for sale to manufacturers only, for fabrication at their factories—not a dealer item.

9767 Emergency Freight Charges: The minimum delivered prices of patented gypsum wallboard and gypsum plasterboard are directly affected by the permissive order of the Interstate Commerce Commission authorizing an increase in freight rates. On Interstate traffic the freight increase becomes effective on the effective date of the Interstate tariff, and in Intrastate traffic the freight increase is effective when approved by the State Commission.

When emergency freight charges become effective the minimum delivered price of patented gypsum wallboard and gypsum plasterboard is to be the lowest combination of mill price plus freight, including emergency charge, from that mill to destination, as follows:

Where the minimum delivered price is the result of mill price plus Interstate freight, the increase is to be added on the effective date of the Interstate tariff.

Where the minimum delivered price is the result of mill price plus Intrastate freight, the increase is effective when approved by the State Commission.

The amount of increase in freight to be added to minimum f.o.b. mill prices of patented gypsum wallboard and gypsum plasterboard shall be as detailed in following schedule:

Opposite old rate, using the table below, is the proper new pricing rate, including emergency freight charge, in cents per 100 pounds:

Old rate	New rate	Old rate	New rate	Old rate	New rate
.05	.05	.18	.19	.31	.33
.055	.06	.185	.20	.315	.34
.06	.06	.19	.20	.32	.34
.065	.07	.195	.21	.325	.35
.07	.07	.20	.21	.33	.35
.075	.08	.205	.22	.335	.36
.08	.09	.21	.22	.34	.36
.085	.09	.215	.23	.345	.37
.09	.10	.22	.24	.35	.37
.095	.10	.225	.24	.355	.38
.10	.11	.23	.25	.36	.39
.105	.11	.235	.25	.365	.39
.11	.12	.24	.26	.37	.40
.115	.12	.245	.26	.375	.40
.12	.13	.25	.27	.38	.41
.125	.13	.255	.27	.385	.41
.13	.14	.26	.28	.39	.42
.135	.14	.265	.28	.395	.42
.14	.15	.27	.29	.40	.43
.145	.16	.275	.29	.405	.43
.15	.16	.28	.30	.41	.44
.155	.17	.285	.30	.415	.44
.16	.17	.29	.31	.42	.45
.165	.18	.295	.32	.425	.45
.17	.18	.30	.32	.43	.46
.175	.19	.305	.33		

On all old rates over 43¢ per cwt. to secure new rate add flat 3¢ per cwt. (.435 becomes .465, .44 becomes .47, etc.)

9768 Stopover, Switching and Other Extra Delivery Charges: All stopover charges, switching charges and other extra delivery charges, including full Emergency Increase applicable to such charges, will be paid by customers. Exception: Stopover charges need not be included on shipments into the States of Michigan, Wisconsin, Illinois, Indiana, Ohio, Kansas, Missouri, Arkansas, Oklahoma, Iowa, Minnesota, North Dakota, South Dakota, Texas, Nebraska, Kentucky, Montana, Colorado and Wyoming.

The above prices apply to the sale of all board embodying the claims of our patents in all markets except where an exception is made as hereinafter expressly stated:

(1) In the States of Illinois and Wisconsin, to all destinations where a 60,000 lb. minimum (from Fort Dodge or Grand Rapids) is in effect, delivered prices of patented board and/or lath, in pool cars, stopover cars, straight cars or mixed cars with other gypsum products, will be mill base price plus 60,000 lb. rate, regardless of minimum shipped. Rate applying to 80,000 lb. minimum out of Fort Dodge or Grand Rapids into these states will be used in pricing patented board and/or lath in carloads or pool cars consigned to a single destination only, with the exception that shipments to the City of Superior, Wisconsin may be priced on the 80,000 lb. rate when included in 80,000 lb. stopover cars with shipments for the Twin Cities, Duluth and Steelton, Minnesota.

(2) 1/2" Wallboard, $29.50 per M sq. ft. f.o.b. Fort Dodge, Iowa; Sweetwater, Texas; Acme, Texas; or Southard, Oklahoma, for shipment into Oklahoma, Texas, Arkansas, Louisiana, New Mexico and Arizona.

(3) In straight carloads of patented gypsum board and/or lath products, consigned to one destination and invoiced to one account, deduct $2.00 per M sq. ft. from f.o.b. Oakfield prices for shipment by rail to dealers warehouse or nearest siding in Metropolitan New York—New Jersey Area as follows: Manhattan, Bronx, Kings, Queens, Richmond, Westchester, Rockland, Nassau and Suffolk Counties, New York; Hudson, Essex, Union, Bergen, Passaic, Morris Middlesex, Mercer, Somerset, Monmouth, Hunterdon, Warren, Sussex and Ocean Counties, New Jersey.

On pool cars or mixed cars into the Metropolitan New York—New Jersey area as described above, minimum

quantity is 5000 sq. ft. of patented gypsum board and/or lath products to one destination. Note: Any mixture of metallized and regular patented board products may be combined to make up the required minimums.

Where any licensee or any of its employees, salesmen or executives has knowledge or notice, either directly or indirectly, that orders for less than straight car quantities of patented gypsum board products to be shipped into the above defined area have been pooled for the purpose of or for effect of obtaining the reduced price for straight cars for each participant in the pool, licensor shall regard such sale as made at a price less than the minimum price fixed by the licensor and a violation of the terms of the license agreement.

(4) Straight or mixed cars board f.o.b. dealers siding in switching limits of Grand Rapids, Michigan, add $1.00 per M sq. ft. to prices applying f.o.b. cars, Grand Rapids Mill.

9769 †(5) 24″x48″ Cutstock Plasterboard. In States of Kansas, Missouri, Oklahoma, Arkansas, Mississippi and Alabama the minimum price is $17.50 per M sq. ft. for 1/4″ and 3/8″ thickness and $18.75 per M sq. ft. for 1/2″ thickness, f.o.b. Plasterco, Va., Grand Rapids, Mich., Fort Dodge, Ia., Southard, Okla., Sweetwater, Texas and Acme, Texas.

†(6) 32″x48″ Gypsum Board. In all areas 32″x48″ gypsum board is subject to the minimum wallboard price except:

(a) Where used for specific roof jobs it is subject to the minimum plasterboard price for such specific jobs.

†(b) In all states east of the Mississippi River (except Wisconsin and Upper Michigan), and in the states of Missouri, Kansas, Oklahoma, Arkansas and Louisiana, 32″x48″ board, if grey surfaced and round edged, is subject to minimum plasterboard price.

(7) 36″x48″ Gypsum Board. 36″x48″ is standard plasterboard size in all states for use on specific gypsum roof jobs only and is subject to minimum plasterboard price for such specific gypsum roof jobs.

(8) Minimum Price Cutstock Plasterboard for shipment to Niagara, Erie (including the town of Gowanda, New York) Monroe and Wayne Counties, N. Y.:

1/4" and 3/8"—$12.50 per M sq. ft. f.o.b. cars Oakfield, N. Y.
1/4" and 3/8"—$14.50 per M sq. ft. delivered by truck or picked up at Oakfield, N. Y.

NOTE: These prices do not apply 32"x48" board. See Paragraph (6).

(9) For Texas Centennial (Dallas, Texas)

The minimum prices of patented gypsum wallboard, aluminum paint primed, one coat, both sides and four edges, for the Texas Centennial, Dallas, Texas, are as follows:

3/8" Gypsum Wallboard—$43.50 per M sq. ft. f.o.b. Sweetwater, Texas
1/2" Gypsum Wallboard— 44.50 per M sq. ft. f.o.b. Sweetwater, Texas

Prices of same boards primed one side only, and four edges, are $4.50 per M sq. ft. less than minimum prices shown above.

9770 (10) Delivered carload minimum prices in certain suburbs same as in city proper, as indicated below:

Delivered Carload Minimum Prices in—	*Same as—*
College Park, Ga.	Atlanta, Ga.
Elkridge, and Glen Burnie, Maryland	Baltimore, Md.
Bristol, Tenn.	Bristol, Va.
Cook and DuPage counties, Ill., Lake County, Indiana; also following towns in Lake County, Illinois: Deerfield, Highland Park, and Lake Forest.	Chicago, Ill.
Cheviot & Bridgetown, O.	Cincinnati, O.
Euclid, North Randall and Bedford, O.	Cleveland, O.
Wayne county; and towns of Birmingham, Clawson, Farmington, Ferndale and Royal Oak, in Oakland county; and Warren, Halfway, Fraser, Roseville, and Centerline in Macomb county, Michigan.	Detroit, Mich.
Dodson and Edgecomb, Mo.; Rosedale, Waldo, Argentine, Westport, Overland Park and Kansas City, Kansas.	Kansas City, Mo.
Kings County, N. Y.	Brooklyn, N. Y.
Ferguson, Kinlock, Overland, Brentwood, Kirkwood, Jennings, Wellston, Clayton, Webster Groves, Maplewood, Gravois Station, Old Orchard, and Lake Junction, Mo.	St. Louis, Mo.
Armory, Indian Orchard, Oak Street and Chicopee, Mass.	Springfield, Mass.
South Windham, Maine	Portland, Maine
Gabe, Sheppard and Wilmont, Okla.	Oklahoma City, Okla.
Arlington Siding (Poughkeepsie), N. Y.	Poughkeepsie, N. Y.

†(11) Sales to Contractors and Odd Sizes:

On odd sizes and on sales to contractors, roofing contractors, and metal ceiling contractors, add differentials per M sq. ft. as follows. (Note: Sales to roofing contractors are for specific roof jobs only):

To Dealers				To Contractors (Incl. Metal Ceil. Contractors)				To Roofing Contractors			
Std. Sizes		Odd Sizes		Std. Sizes		Odd Sizes		Std. Sizes		Odd Sizes	
W. Bd.	Pl. Bd.	W. Bd.	Pl. Bd.	W. Bd.	Pl. Bd.	W. Bd.	Pl. Bd.	W. Bd.	Pl. Bd.	W. Bd.	Pl. Bd.
—	—	2.50	1.25	2.50	1.25	5.00	2.50	1.25	1.25	1.25	1.25

Very truly yours,

UNITED STATES GYPSUM COMPANY,

———, *Vice President.*

† Indicates change in this reissue.

9771 (10) Delivered carload minimum prices in certain suburbs same as in city proper, as indicated below:

Delivered Carload Minimum Prices in—	*Same as—*
College Park, Ga.	Atlanta, Ga.
Elkridge, and Glen Burnie, Maryland	Baltimore, Md.
Bristol, Tenn.	Bristol, Va.
Cook and Du Page counties, Ill., Lake County, Indiana; also following towns in Lake Count Illinois; Deerfield, Highland Park and Lake Forest (all to be priced on rate of 13¢ per cwt. plus Emergency Charge regardless of minimum shipped)	Chicago, Ill.
Cheviot & Bridgetown, O.	Cincinnati, O.
Euclid, North Randall and Bedford, O.	Cleveland, O.
Wayne county; and towns of Birmingham, Clawson, Farmington, Ferndale and Royal Oak, in Oakland county; and Warren, Halfway, Fraser, Roseville, and Centerline in Macomb county, Michigan.	Detroit, Mich.
Dodson and Edgecomb, Mo.; Rosedale, Waldo, Argentine, Westport, Overland Park and Kansas City, Kansas.	Kansas City, Mo.
Kings County, N. Y.	Brooklyn, N. Y.
Ferguson, Kinlock, Overland, Brentwood, Kirkwood, Jennings, Wellston, Clayton, Webster Groves, Maplewood, Gravois Station, Old Orchard, and Lake Junction, Mo.	St. Louis, Mo.
Armory, Indian Orchard, Oak Street and Chicopee, Mass.	Springfield, Mass.
South Windham, Maine	Portland, Maine
Gabe, Sheppard and Wilmont, Okla.	Oklahoma City, Okla.
Arlington Siding (Poughkeepsie), N. Y.	Poughkeepsie, N. Y

†(11) Sales to contractors and prefabricated house manufacturers; also extras on odd sizes: On odd sizes and on sales to contractors, roofing contractors, metal ceiling contractors and prefabricated house manufacturers, add differentials per M sq. ft. as follows. (Note: Sales to roofing contractors are for specific roof jobs only):

To Dealers				To Contractors (Incl. Metal Ceiling Contrs.) & to Prefabricated House Mfrs.				To Roofing Contractors			
Std. Sizes		Odd Sizes		Std. Sizes		Odd Sizes		Std. Sizes		Odd Sizes	
Bd.	Pl. Bd.	W. Bd.	Pl. Bd.	W. Bd.	Pl. Bd.	W. Bd.	Pl. Bd.	W. Bd.	Pl. Bd.	W. Bd.	Pl. B
—		2.50	1.25	2.50	1.25	5.00	2.50	1.25	1.25	1.25	1.2

Very truly yours,

UNITED STATES GYPSUM COMPANY,

_____,

Vice President.

† Indicates change in this reissue.

9772 UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

FEBRUARY 22, 1936.

Carload Shipments—Board License Bulletin No. 1—Cancels Bulletin No. 1, Dated September 16, 1935—and All Supplements Thereto.

DEAR SIRS: Referring to our license contract with you, you are hereby notified that effective February 24, 1936 the minimum prices at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent); including Haggerty patent number 1,500,452 and Hite patent number 1,230,297, are as follows:

Patented gypsum wallboard and plasterboard products shall be quoted and sold on a delivered basis, f.o.b. cars destination. Delivered price is lowest combination of mill price plus freight, including emergency freight charge (see page 2) from that mill to destination. In stopover cars delivered price for any part of car is carload delivered price as above defined to point of delivery of that part of car. In every case rates as shown in published railroad freight tariffs apply. To determine board footage required to meet straight or mixed carload minimum weights, as shown in published railroad freight tariffs, use weights per M sq. ft. as shown below:

Dealer Prices f.o.b. cars: (Applying for standard sizes as listed in Bulletin No. 4)	¼" Gypsum Wallboard (Wt. 950 # per M)	5/16" Gypsum Wallboard (Wt. 1175 # per M) See Note *	⅜" Gypsum Wallboard (Wt. 1400 # per M)	½" Gypsum Wallboard (Wt. 1900 # per M)	¾" Gypsum Wallboard (Wt. 3300 # per M)	⅜" Tiled Gypsum Wallboard (Wt. 1400 # per M)	¼" Gypsum Plasterboard (Wt. 950 # per M)	⅜" Gypsum Plasterboard (Wt. 1400 # per M)	½" Gypsum Plasterboard (Wt. 1900 # per M)	¾" Gypsum Plasterboard (Wt. 3300 # per M)
Acme, Tex.	22.50	— —	28.50	31.00	— —	50.00	15.00	15.00	16.25	— —
Detroit, Mich.	— —	— —	— —	— —	— —	— —	— —	15.00	— —	— —
Fort Dodge, Iowa	22.50	— —	28.50	31.00	36.50	50.00	15.00	15.00	16.25	20.00
Grand Rapids, Mich.	22.50	— —	28.50	31.00	— —	50.00	15.00	15.00	16.25	— —
Gypsum, Ohio	22.50	26.50	28.50	31.00	36.50	50.00	15.00	15.00	16.25	20.00
Laramie, Wyo.	26.75	— —	34.75	— —	— —	56.25	— —	21.25	— —	— —
Loveland, Colo.	26.50	— —	34.50	39.00	— —	56.00	— —	21.00	— —	— —
Oakfield, N. Y.	22.50	26.50	28.50	31.00	36.50	50.00	15.00	15.00	16.25	20.00
Plastereo, Va.	22.50	— —	28.50	31.00	— —	50.00	15.00	15.00	16.25	— —
Southard, Okla.	22.50	— —	28.50	31.00	36.50	50.00	15.00	15.00	16.25	20.00
Sweetwater, Tex.	22.50	— —	28.50	31.00	— —	50.00	15.00	15.00	16.25	— —

* 5/16" Gypsum Wallboard is for sale to manufacturers only, for fabrication at their factories—not a dealer item.

9773 Emergency Freight Charges: The minimum delivered prices of patented gypsum wallboard and gypsum plasterboard are directly affected by the permissive order of the Interstate Commerce Commission authorizing an increase in freight rates. On Interstate traffic the freight increase becomes effective on the effective date of the Interstate tariff, and in Intrastate traffic the freight increase is effective when approved by the State Commission.

When emergency freight charges become effective the minimum delivered price of patented gypsum wallboard and gypsum plasterboard is to be the lowest combination of mill price plus freight, including emergency charge, from that mill to destination, as follows:

Where the minimum delivered price is the result of mill price plus Interstate freight, the increase is to be added on the effective date of the Interstate tariff.

Where the minimum delivered price is the result of mill price plus Intrastate freight, the increase is effective when approved by the State Commission.

The amount of increase in freight to be added to minimum f. o. b. mill prices of patented gypsum wallboard and gypsum plasterboard shall be as detailed in following schedule:

Opposite old rate, using the table below, is the proper new pricing rate, including emergency freight charge, in cents per 100 pounds:

Old rate	New rate	Old rate	New rate	Old rate	New rate
.05	.05	.18	.19	.31	.33
.055	.06	.185	.20	.315	.34
.06	.06	.19	.20	.32	.34
.065	.07	.195	.21	.325	.35
.07	.07	.20	.21	.33	.35
.075	.08	.205	.22	.335	.36
.08	.09	.21	.22	.34	.36
.085	.09	.215	.23	.345	.37
.09	.10	.22	.24	.35	.37
.095	.10	.225	.24	.355	.38
.10	.11	.23	.25	.36	.39
.105	.11	.235	.25	.365	.39
.11	.12	.24	.26	.37	.40
.115	.12	.245	.26	.375	.40
.12	.13	.25	.27	.38	.41
.125	.13	.255	.27	.385	.41
.13	.14	.26	.28	.39	.42
.135	.14	.265	.28	.395	.42
.14	.15	.27	.29	.40	.43
.145	.16	.275	.29	.405	.43
.15	.16	.28	.30	.41	.44
.155	.17	.285	.30	.415	.44
.16	.17	.29	.31	.42	.45
.165	.18	.295	.32	.425	.45
.17	.18	.30	.32	.43	.46
.175	.19	.305	.33		

On all old rates over 43¢ per cwt. to secure new rate add flat 3¢ per cwt. (.435 becomes .465, .44 becomes .47, etc.)

9774 Stopover, Switching and Other Extra Delivery Charges:

All stopover charges, switching charges and other extra delivery charges, including full Emergency Increase applicable to such charges, will be paid by customers. Exception: Stopover charges need not be included on shipments into the states of Michigan, Wisconsin, Illinois, Indiana, Ohio, Kansas, Missouri, Arkansas, Oklahoma, Iowa, Minnesota, North Dakota, South Dakota, Texas, Nebraska, Kentucky, Montana, Colorado and Wyoming.

The above prices apply to the sale of all board embodying the claims of our patents in all markets except where an exception is made as hereinafter expressly stated:

(1) In the states of Illinois and Wisconsin, to all destinations where a 60,000 lb. minimum (from Fort Dodge or Grand Rapids) is in effect, delivered prices of patented board and/or lath, in pool cars, stopover cars, straight cars or mixed cars with other gypsum products, will be mill base price plus 60,000 lb. rate, regardless of minimum shipped. Rate applying to 80,000 lbs. minimum out of Fort Dodge or Grand Rapids into these states will be used in pricing patented board and/or lath in carloads or pool cars consigned to a single destination only, with the exception that shipments to the City of Superior, Wisconsin may be priced on the 80,000 lb. rate when included in 80,000 lb. stopover cars with shipments for the Twin Cities, Duluth and Steelton, Minnesota.

†(2) 1/4" Wallboard Exceptions:

(a) For shipment into states of New Mexico, Montana, Utah and that portion of Idaho south and east of but not including the counties of Valley, Boise, Elmore, Idaho and Owyhee, minimum price of 1/4" patented gypsum wallboard is $20.00 per M sq. ft. f.o.b. Acme, Texas; Sweetwater, Texas; Southard, Oklahoma; and Ft. Dodge, Iowa; or $24.25 per M sq. ft. f.o.b. Laramie, Wyoming; or $24.00 per M sq. ft. f.o.b. Loveland, Colorado.

†(b) For shipment into states of Arkansas, Louisiana, Mississippi, Alabama, Georgia, South Carolina and Florida, minimum price of 1/4" patented gypsum wallboard is $21.00 per M sq. ft. f.o.b. Acme, Texas; Sweetwater, Texas; Southard, Oklahoma; Fort Dodge, Iowa; Grand Rapids, Michigan; and Plasterco, Virginia.

†(3) 3/8" Wallboard Exceptions:

†(a) For shipment into states of New Mexico, Texas, Arkansas, Louisiana, Mississippi, Alabama, Georgia, South Carolina, and Florida, minimum price of 3/8" patented gypsum wallboard is $25.00 per M sq. ft. f.o.b. Acme, Texas; Sweetwater, Texas; Southard, Oklahoma; Fort Dodge, Iowa; Grand Rapids, Michigan; and Plasterco, Virginia.

†(b) For shipment into state of Oklahoma, minimum price of 3/8" patented gypsum wallboard is $27.00 per M sq. ft. f.o.b. Acme, Texas; Sweetwater, Texas; and Southard, Oklahoma.

9775 †(4) 1/2" Wallboard Exceptions:

(a) For shipment into states of New Mexico and Texas, also into City of Texarkana, Arkansas, also into Caddo, Bossier, De Soto, Red River, Bienville, Webster and Claiborne Counties, Louisiana, minimum price of 1/2" patented gypsum wallboard is $26.00 per M sq. ft. f.o.b. Acme, Texas; Sweetwater, Texas; and Southard, Oklahoma. See paragraph (d) below.

†(b) For shipment into state of Oklahoma, minimum price of 1/2" patented gypsum wallboard is $28.00 per M sq. ft. f.o.b. Acme, Texas; Sweetwater, Texas; and Southard, Oklahoma. See paragraph (d) below.

†(c) For shipment into states of Arkansas (except city of Texarkana—see (a) above), Louisiana (except counties as listed in (a) above), Arizona, Kansas and Nebraska, minimum price of 1/2" patented gypsum wallboard is $29.50 per M sq. ft. f.o.b. Acme, Texas; Sweetwater, Texas; Southard, Oklahoma; and Fort Dodge, Iowa. See paragraph (d) below.

(d) Minimum prices for 1/2" patented gypsum wallboard, surfaced with a weather resisting paper, are not effective when sold for use as an exterior [illegible] thing material on specific jobs, as such sales will be considered an experimental development of gypsum board in a new field.

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†(5) 5/16' Plasterboard. The minimum price of 5/16" patented gypsum plasterboard (weight 1175# per M), in straight and pool carloads, or in mixed carloads with other

gypsum products, for shipment into following markets only, is as follows:

—$15.00 per M sq. ft. f.o.b. cars delivered to dealers warehouse or siding in Marion County, Indiana (Indianapolis); Sangamon County, Illinois (Springfield); Woodbury County, Iowa (Sioux City); Henrico County, Virginia (Richmond); Hartford County, Connecticut (Hartford); Hampden County, Massachusetts (Springfield); Providence County, Rhode Island (Providence); Mercer County County, New Jersey (Trenton); Lancaster County, Pennsylvania (Lancaster); Cuyahoga County (Cleveland) and towns of Willoughby and Wickliffe, Ohio; also following towns in Missouri; St. Louis, Ferguson, Kinloch, Overland, Brentwood, Kirkwood, Jennings, Wellston, Clayton, Webster Groves, Maplewood, Gravois Station, Old Orchard and Lake Junction. See paragraph (8) for minimum quantity required for shipment in pool cars or mixed cars into Mercer County, New Jersey.

—$16.00 per M sq. ft. f.o.b. cars delivered to dealers warehouse or siding in towns of Kansas City, Dodson and Edgecomb, Missouri; also into towns of Rosedale, Waldo, Argentine, Westport, Overland Park and Kansas City, Kansas; also in Hennepin County, Minnesota (Minneapolis) and Ramsey County, Minnesota (St. Paul).

(6) 3/8" Plasterboard. The minimum price of 3/8" patented gypsum plasterboard in straight and pool carloads, or in mixed carloads with other gypsum products is $15.00 per M sq. ft. f.o.b. cars delivered to dealers warehouse or siding in (Detroit Area) Wayne County, Michigan; towns of Birmingham, Clauson, Farmington, Ferndale and Royal Oak in Oakland County, Michigan; also
9776 towns of Warren, Halfway, Fraser, Roseville and Centerline in Macomb County, Michigan.

(7) In straight carloads of patented gypsum board and/or lath products, (except 5/16" thickness plasterboard—see par. 5) consigned to one destination and invoiced to one account, deduct $2.00 per M sq. ft. from f.o.b. Oakfield prices for shipment by rail to dealers warehouse or nearest siding in Metropolitan New York—New Jersey Area as follows: Manhattan, Bronx, Kings, Queens, Richmond, Westchester, Rockland, Nassau and Suffolk Counties, New York; Hudson, Essex, Union, Bergen, Passaic, Morris, Middlesex, Mercer, Somerset, Mon-

mouth, Hunterdon, Warren, Sussex and Ocean Counties, New Jersey; also in Philadelphia Area as follows: Bucks, Montgomery, Chester, Delaware and Philadelphia Counties, Pennsylvania and Camden County, New Jersey.

Where any licensee or any of its employees, salesmen or executives has knowledge or notice, either directly or indirectly, that orders for less than straight car quantities of patented gypsum board products to be shipped into the above defined areas have been pooled for the purpose of or for effect of obtaining the reduced price for straight cars for each participant in the pool, licensor shall regard such sale as made at a price less than the minimum price fixed by the licensor and a violation of the terms of the license agreement.

(8) On pool cars or mixed cars into the Metropolitan New York—New Jersey Area and the Philadelphia Area as described in paragraph (7) above, minimum quantity is 5000 sq. ft. of patented gypsum board and/or lath products to one destination. Note: Any mixture of metallized and regular patented board products may be combined to make up the required minimums.

(9) Straight or mixed cars board f.o.b. dealers siding in switching limits of Grand Rapids, Michigan, add $1.00 per M sq. ft. to prices applying f.o.b. cars, Grand Rapids Mill.

(10) 24" x 48" Cutstock Plasterboard. In states of Kansas, Missouri, Oklahoma, Arkansas, Mississippi and Alabama the minimum price is $17.50 per M sq. ft. for 1/4" and 3/8" thicknesses and $18.75 per M sq. ft. for 1/2" thickness, f.o.b. Plasterco, Va., Grand Rapids, Mich., Fort Dodge, Ia., Southard, Okla., Sweetwater, Texas and Acme, Texas.

(11) 32" x 48" Gypsum Board. In all areas 32" x 48" gypsum board is subject to the minimum wallboard price except:

(a) Where used for specific roof jobs it is subject to the minimum plasterboard price for such specific jobs.

(b) In all states east of the Mississippi River and in the states of Iowa, Minnesota, Missouri, Nebraska, Colorado, Kansas, Oklahoma, Arkansas and Louisiana, 32" x 48" board, if grey surfaced and round edged, is subject to minimum plasterboard price.

9777 (12) 36" x 48" Gypsum Board. 36" x 48" is standard plasterboard size in all states for use on specific gypsum roof jobs only and is subject to minimum plasterboard price for such specific gypsum roof jobs.

(13) Minimum Price Cutstock Plasterboard for shipment to Niagara, Erie (including the town of Gowanda, New York) Monroe and Wayne counties, N. Y.:

1/4" and 3/8"—$12.50 per M sq. ft. f.o.b. cars Oakfield, N. Y.

1/4" and 3/8"—$14.50 per M sq. ft. delivered by truck or picked up at Oakfield, N. Y.

Note: These prices do not apply 32" x 48" board. See paragraph (6).

(14). For Texas Centennial (Dallas, Texas):

The minimum prices of patented gypsum wallboard, aluminum paint primed, one coat, both sides and four edges, for the Texas Centennial, Dallas, Texas, are as follows:

3/8" Gypsum Wallboard—$43.50 per M sq. ft. f.o.b. Sweetwater, Texas

1/2" Gypsum Wallboard—44.50 per M sq. ft. f.o.b. Sweetwater, Texas.

Prices of same boards primed one side only, and four edges, are $4.50 per M sq. ft. less than minimum prices shown above.

(15) Delivered carload minimum prices in certain suburbs same as in city proper, as indicated below:

Delivered Carload Minimum Prices in—	*Same as—*
College Park, Ga.	Atlanta, Ga.
Elkridge, and Glen Burnie, Maryland	Baltimore, Md.
Bristol, Tenn.	Bristol, Va.
Cook and DuPage counties, Ill., Lake County, Indiana; also following towns in Lake County, Illinois: Deerfield, Highland Park and Lake Forest (all to be priced on rate of 13¢ per cwt. plus Emergency Charge regardless of minimum shipped)	Chicago, Ill.
Cheviot & Bridgetown, O.	Cincinnati, O.
Euclid, North Randall and Bedford, O.	Cleveland, O.
Wayne county; and towns of Birmingham, Clawson, Farmington, Ferndale and Royal Oak, in Oakland county; and Warren, Halfway, Fraser, Roseville, and Centerline in Macomb county, Michigan.	Detroit, Mich.
Dodson and Edgecomb, Mo.; Rosedale, Waldo, Argentine, Westport, Overland Park and Kansas City, Kansas.	Kansas City, Mo.
Kings County, N. Y.	Brooklyn, N. Y.
Ferguson, Kinlock, Overland, Brentwood, Kirkwood, Jennings, Wellston, Clayton, Webster Groves, Maplewood, Gravois Station, Old Orchard, and Lake Junction, Mo.	St. Louis, Mo.
9778 Armory, Indian Orchard, Oak Street and Chicopee, Mass.	Springfield, Mass.
South Windham, Maine	Portland, Maine
Gabe, Sheppard and Wilmont, Okla.	Oklahoma City, Okla.
Arlington Siding (Poughkeepsie), N. Y.	Poughkeepsie, N. Y.

(16) Sales to contractors and prefabricated house manufacturers, also extras on odd sizes:

On odd sizes and on sales to contractors, roofing contractors, metal ceiling contractors and prefabricated house manufacturers, add differentials per M sq. ft. as follows.

(Note: Sales to roofing contractors are for specific roof jobs only):

To Dealers				To Contractors (Incl. Metal Ceiling Contrs.) & to Prefabricated House Mfrs.				To Roofing Contractors			
Std. Sizes		Odd Sizes		Std. Sizes		Odd Sizes		Std. Sizes		Odd Sizes	
W. Bd.	Pl. Bd.	W. Bd.	Pl. Bd.	W. Bd.	Pl. Bd.	W. Bd.	Pl. Bd.	W. Bd.	Pl. Bd.	W. Bd.	Pl. Bd.
—	—	2.50	1.25	2.50	1.25	5.00	2.50	1.25	1.25	1.25	1.25

Very truly yours,

UNITED STATES GYPSUM COMPANY,

———— ————, *Vice President.*

† Indicates change in this reissue.

9779 (4) 1/2" Wallboard Exceptions:

(a) For shipment into states of New Mexico and Texas, also into city of Texarkana, Arkansas, also into Caddo, Bossier, De Soto, Red River, Bienville, Webster and Claiborne Counties, Louisiana, minimum price of 1/2" patented gypsum wallboard is $26.00 per M sq. ft. f.o.b. Acme, Texas; Sweetwater, Texas; and Southard, Oklahoma. See paragraph (d) below.

(b) For shipment into state of Oklahoma, minimum price of 1/2" patented gypsum wallboard is $28.00 per M sq. ft. f.o.b. Acme, Texas; Sweetwater, Texas; and Southard, Oklahoma. See paragraph (d) below.

(c) For shipment into states of Arkansas (except city of Texarkana—see (a) above), Louisiana (except counties as listed in (a) above), Arizona, Kansas and Nebraska, minimum price of 1/2" patented gypsum wallboard is $29.50 per M sq. ft. f.o.b. Acme, Texas; Sweetwater, Texas; Southard, Oklahoma; and Fort Dodge, Iowa. See paragraph (d) below.

(d) Minimum prices for 1/2" patented gypsum sheathing, surfaced with a weather resisting paper, are not effective when sold for use as an exterior sheathing material on specific jobs, as such sales will be considered an experimental development of gypsum board in a new field. Exception: (Effective March 6, 1936) The minimum price of 1/2" patented gypsum sheathing, Tongue and Groove Edge, width 24", lengths 6'8" and 8', for shipment into Cook, Lake, DuPage and McHenry Counties, Illinois and Lake County, Indiana, also for shipment into Erie and Niagara Counties, New York, is $15.00 per M sq. ft. f.o.b. Grand Rapids, Michigan and Oakfield, New York.

(5) 5/16" Plasterboard. The minimum price of 5/16" patented gypsum plasterboard (weight 1175# per M), in straight and pool carloads, or in mixed carloads with other gypsum products, for shipment into following markets only, is as follows:

—$15.00 per M sq. ft. f.o.b. cars delivered to dealers warehouse or siding in Marion County, Indiana (Indianapolis); Sangamon County, Illinois (Springfield); Woodbury County, Iowa (Sioux City); Henrico County, Virginia (Richmond); Hartford County, Connecticut (Hartford); Hampden County, Massachusetts (Springfield); Providence County, Rhode Island (Providence); Mercer County, New Jersey (Trenton); Lancaster County, Penn-

sylvania (Lancaster); Cuyahoga County (Cleveland) and towns of Willoughby and Wickliffe, Ohio; also following towns in Missouri; St. Louis, Ferguson, Kinloch, Overland, Brentwood, Kirkwood, Jennings, Wellston, Clayton, Webster Groves, Maplewood, Gravois Station, Old Orchard and Lake Junction. See paragraph (8) for minimum quantity required for shipment in pool cars or mixed cars into Mercer County, New Jersey.

—$16.00 per M sq. ft. f.o.b. cars delivered to dealers warehouse or siding in towns of Kansas City, Dodson and Edgecomb, Missouri; also into towns of Rosedale, Waldo, Argentine, Westport, Overland Park and Kansas City, Kansas; also in Hennepin County, Minnesota (Minneapolis) and Ramsey County, Minnesota (St. Paul).

(6) 3/8" Plasterboard. The minimum price of 3/8" patented gypsum plasterboard, in straight and pool carloads, or in mixed carloads with other gypsum products is $15.00 per M sq. ft. f.o.b. cars delivered to dealers warehouse or siding in (Detroit Area) Wayne County, Michigan; towns of Birmingham, Clauson, Farmington, Ferndale and Royal Oak in Oakland County, Michigan; also towns of

9780 †(4) 1/2" Wallboard Exceptions:

†(a) For shipment into states of New Mexico, Texas and Arkansas, also into Caddo, Bossier, De Soto, Red River, Bienville, Webster and Claiborne Counties, Louisiana, minimum price of 1/2" patented gypsum wallboard is $26.00 per M sq. ft. f.o.b. Acme, Texas; Sweetwater, Texas; Southard, Oklahoma; and Ft. Dodge, Iowa. See paragraph (d) below.

(b) For shipment into state of Oklahoma, minimum price of 1/2" patented gypsum wallboard is $28.00 per M sq.ft. f.o.b. Acme, Texas; Sweetwater, Texas; and Southard, Oklahoma. See paragraph (d) below.

†(c) For shipment into States of Louisiana (except counties as listed in (a) above), Arizona, Kansas and Nebraska, minimum price of 1/2" patented gypsum wallboard is $29.50 per M sq. ft. f.o.b. Acme, Texas; Sweetwater, Texas; Southard, Oklahoma; and Fort Dodge, Iowa. See paragraph (d) below.

(d) Minimum price for 1/2" patent gypsum sheathing, surfaced with a weather resisting paper, are not effective

† Indicates change in this reissue.

when sold for use as an exterior sheathing material on specific jobs, as such sales will be considered an experimental development of gypsum board in a new field. Exception: (Effective March 6, 1936) The minimum price of 1/2" patented gypsum sheathing, Tongue and Groove Edge, width 24", lengths 6'8" and 8', for shipment into Cook, Lake, DuPage and McHenry Counties, Illinois and Lake County, Indiana, also for shipment into Erie and Niagara Counties, New York, is $15.00 per M sq.ft. f.o.b. Grand Rapids, Michigan and Oakfield, New York.

~~(5)~~ 5/16" Plasterboard. The minimum price of 5/16" patented gypsum plasterboard (weight 1175# per M), in straight and pool carloads, or in mixed carloads with other gypsum products, for shipment into following markets only, is as follows:

—$15.00 per M sq.ft. f.o.b. cars delivered to dealers warehouse or siding in Marion County, Indiana (Indianapolis); Sangamon County, Illinois (Springfield); Woodbury County, Iowa (Sioux City); Henrico County, Virginia (Richmond); Hartford County, Connecticut (Hartford); Hampden County, Massachusetts (Springfield); Providence County, Rhode Island (Providence); Mercer County, New Jersey (Trenton); Lancaster County, Pennsylvania (Lancaster); Cuyahoga County (Cleveland) and towns of Willoughby and Wickliffe, Ohio; also following towns in Missouri; St. Louis, Ferguson, Kinloch, Overland, Brentwood, Kirkwood, Jennings, Wellston, Clayton, Webster Groves, Maplewood, Gravois Station, Old Orchard and Lake Junction. See paragraph (8) for minimum quantity required for shipment in pool cars or mixed cars into Mercer County, New Jersey.

—$16.00 per M sq.ft. f.o.b. cars delivered to dealers warehouse or siding in towns of Kansas City, Dodson and Edgecomb, Missouri; also into towns of Rosedale, Waldo, Argentine, Westport, Overland Park and Kansas City, Kansas; also in Hennepin County, Minnesota (Minneapolis) and Ramsay County, Minnesota (St. Paul).

(6) 3/8" Plasterboard. The minimum price of 3/8" patented gypsum plasterboard, in straight and pool carloads, or in mixed carloads with other gypsum products is $15.00 per M sq.ft. f.o.b. cars delivered to dealers warehouse or siding in (Detroit Area) Wayne County, Michigan; towns of Birmingham, Clauson, Farmington, Ferndale and Royal Oak in Oakland County, Michigan; also towns of

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9781 UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

MARCH 14, 1936.

Carload Shipments—Board License Bulletin No. 1 (Page 1)—Cancels Page 1 Dated February 22, 1936

DEAR SIRS: Referring to our license contract with you, you are hereby notified that effective March 16, 1936 the minimum prices at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent); including Haggerty patent number 1,500,452 and Hite patent number 1,230,297, are as follows:

Patented gypsum wallboard and plasterboard products shall be quoted and sold on a delivered basis, f.o.b. cars destination. Delivered price is lowest combination of mill price plus freight, including emergency freight charge (see page 2) from that mill to destination. In stopover cars delivered price for any part of car is carload delivered price as above defined to point of delivery of that part of car. In every case rates as shown in published railroad freight tariffs apply. To determine board footage required to meet straight or mixed carload minimum weights, as shown in published railroad freight tariffs, use weights per M sq. ft. as shown below:

Dealer Prices f.o.b. cars: (Applying for standard sizes as listed in Bulletin No. 4)	¼" Gypsum Wallboard (Wt. 950 # per M)	5/16" Gypsum Wallboard (Wt. 1175 # per M) See Note *	⅜" Gypsum Wallboard (Wt. 1400 # per M)	½" Gypsum Wallboard & ½" Gypsum Sheathing (Wt. 1900 # per M)	½" Gypsum Wallboard (Wt. 3300 # per M)	⅜" Tiled Gypsum Wallboard (Wt. 1400 # per M)	¼" Gypsum Plasterboard (Wt. 950 # per M)	⅜" Gypsum Plasterboard (Wt. 1400 # per M)	½" Gypsum Plasterboard (Wt. 1900 # per M)	⅝" Gypsum Plasterboard (Wt. 3300 # per M)
Acme, Tex.	22.50	— —	28.50	31.00	— —	50.00	15.00	15.00	16.25	
Detroit, Mich.	— —	— —	— —	— —	— —	— —	— —	15.00	— —	— —
Fort Dodge, Iowa	22.50	— —	28.50	31.00	36.50	50.00	15.00	15.00	16.25	20.00
Grand Rapids, Mich.	22.50	— —	28.50	31.00	— —	50.00	15.00	15.00	16.25	— —
Gypsum, Ohio	22.50	26.50	28.50	31.00	36.50	50.00	15.00	15.00	16.25	20.00
Laramie, Wyo.	26.75	— —	34.75	— —	— —	56.25	— —	21.25	— —	— —
Loveland, Colo.	26.50	— —	34.50	39.00	— —	56.00	— —	21.00	— —	— —
Oakfield, N. Y.	22.50	26.50	28.50	31.00	36.50	50.00	15.00	15.00	16.25	20.00
Plastereo, Va.	22.50	— —	28.50	31.00	— —	50.00	15.00	15.00	16.25	— —
Southard, Okla.	22.50	— —	28.50	31.00	36.50	50.00	15.00	15.00	16.25	20.00
Sweetwater, Tex.	22.50	— —	28.50	31.00	— —	50.00	15.00	15.00	16.25	— —

* 5/16" Gypsum Wallboard is for sale to manufacturers only, for fabrication at their factories—not a dealer item.

9782 Emergency Freight Charges: The minimum delivered prices of patented gypsum wallboard and gypsum plasterboard are directly affected by the permissive order of the Interstate Commerce Commission authorizing an increase in freight rates. On Interstate traffic the freight increase becomes effective on the effective date of the Interstate tariff, and in Intrastate traffic the freight increase is effective when approved by the State Commission.

When emergency freight charges become effective the minimum delivered price of patented gypsum wallboard and gypsum plasterboard is to be the lowest combination of mill price plus freight, including emergency charge, from that mill to destination, as follows:

Where the minimum delivered price is the result of mill price plus Interstate freight, the increase is to be added on the effective date of the Interstate tariff.

Where the minimum delivered price is the result of mill price plus Intrastate freight, the increase is effective when approved by the State Commission.

The amount of increase in freight to be added to minimum f. o. b. mill prices of patented gypsum wallboard and gypsum plasterboard shall be as detailed in following schedule:

Opposite old rate, using the table below, is the proper new pricing rate, including emergency freight charge, in cents per 100 pounds:

Old rate	New rate	Old rate	New rate	Old rate	New rate
.05	.05	.18	.19	.31	.33
.055	.06	.185	.20	.315	.34
.06	.06	.19	.20	.32	.34
.065	.07	.195	.21	.325	.35
.07	.07	.20	.21	.33	.35
.075	.08	.205	.22	.335	.36
.08	.09	.21	.22	.34	.36
.085	.09	.215	.23	.345	.37
.09	.10	.22	.24	.35	.37
.095	.10	.225	.24	.355	.38
.10	.11	.23	.25	.36	.39
.105	.11	.235	.25	.365	.39
.11	.12	.24	.26	.37	.40
.115	.12	.245	.26	.375	.40
.12	.13	.25	.27	.38	.41
.125	.13	.255	.27	.385	.41
.13	.14	.26	.28	.39	.42
.135	.14	.265	.28	.395	.42
.14	.15	.27	.29	.40	.43
.145	.16	.275	.29	.405	.43
.15	.16	.28	.30	.41	.44
.155	.17	.285	.30	.415	.44
.16	.17	.29	.31	.42	.45
.165	.18	.295	.32	.425	.45
.17	.18	.30	.32	.43	.46
.175	.19	.305	.33		

On all old rates over 43¢ per cwt. to secure new rate add flat 3¢ per cwt. (.435 becomes .465, .44 becomes .47, etc.)

9783 Stopover, Switching and Other Extra Delivery Charges: All stopover charges, switching charges and other extra delivery charges, including full Emergency Increase applicable to such charges, will be paid by customers. Exception: Stopover charges need not be included on shipments into the states of Michigan, Wisconsin, Illinois, Indiana, Ohio, Kansas, Missouri, Arkansas, Oklahoma, Iowa, Minnesota, North Dakota, South Dakota, Texas, Nebraska, Kentucky, Montana, Colorado and Wyoming.

The above prices apply to the sale of all board embodying the claims of our patents in all markets except where an exception is made as hereinafter expressly stated:

†(1) Until further notice the above minimum prices shall not apply to sales of patented gypsum wallboard and gypsum plasterboard products for shipment to or delivery in the following area: States of California, Arizona, Nevada, Utah, Oregon and Washington, also that portion of state of Idaho west and north of and including Owyhee, Gooding, Elmore, Boise, Valley and Idaho Counties.

(2) In the states of Illinois and Wisconsin, to all destinations where a 60,000 lb. minimum (from Fort Dodge or Grand Rapids) is in effect, delivered prices of patented board and/or lath, in pool cars, stopover cars, straight cars or mixed cars with other gypsum products, will be mill base price plus 60,000 lb. rate, regardless of minimum shipped. Rate applying to 80,000 lbs. minimum out of Fort Dodge or Grand Rapids into these states will be used in pricing patented board and/or lath in carloads or pool cars consigned to a single destination only, with the exception that shipments to the City of Superior, Wisconsin may be priced on the 80,000 lb. rate when included in 80,000 lb. stopover cars with shipments for the Twin Cities, Duluth and Steelton, Minnesota.

†(3) 1/4" Wallboard Exceptions:

(a). For shipment into state of New Mexico and that portion of Montana east of but not including Phillips, Petroleum, Musselshell, Yellowstone and Carbon Counties, minimum price of 1/4" patented gypsum wallboard is $20.00 per M sq. ft. f.o.b. Acme, Texas; Sweetwater, Texas; Southard, Oklahoma and Fort Dodge, Iowa; or $24.25 per M sq. ft. f.o.b. Laramie, Wyoming.

†(b) For shipment into that portion of Montana west of and including Phillips, Petroleum, Musselshell, Yellowstone and Carbon Counties, also that portion of Idaho south and east of but not including Owyhee, Gooding, Elmore, Boise, Valley and Idaho Counties, minimum price of 1/4" patented gypsum wallboard is $20.00 per M sq. ft. f.o.b. Fort Dodge, Iowa; or $22.50 per M sq. ft. f.o.b. Seattle, Wash.; or $24.25 per M sq. ft. f.o.b. Laramie, Wyoming.

†(c) For shipment into states of Arkansas, Louisiana, Mississippi, Alabama, Georgia, South Carolina and
9784 Florida, also into Hamilton County only in state of Tennessee minimum price of 1/4" patented gypsum wallboard is $21.00 per M sq. ft. f.o.b. Acme, Texas; Sweetwater, Texas; Southard, Oklahoma; Fort Dodge, Iowa; Grand Rapids, Michigan; and Plasterco, Virginia.

(4) 3/8" Wallboard Exceptions:

†(a) For shipment into states of New Mexico, Texas, Arkansas, Louisiana, Mississippi, Alabama, Georgia, South Carolina, and Florida also into Hamilton County only in state of Tennessee minimum price of 3/8" patented gypsum wallboard is $25.00 per M sq. ft. f.o.b. Acme, Texas; Sweetwater, Texas; Southard, Oklahoma; Fort Dodge, Iowa; Grand Rapids, Michigan; and Plasterco, Virginia.

†(b) For shipment into that portion of Montana west of and including Phillips, Petroleum, Musselshell, Yellowstone and Carbon Counties, also that portion of Idaho south and east of but not including Owyhee, Gooding, Elmore, Boise, Valley and Idaho Counties, minimum price of 3/8" patented gypsum wallboard is $28.50 per M sq.ft. f.o.b. Fort Dodge, Iowa; or $25.00 per M sq.ft. f.o.b. Seattle, Washington; or $34.75 per M sq.ft. f.o.b. Laramie, Wyoming.

(c) For shipment into state of Oklahoma, minimum price of 3/8" patented gypsum wallboard is $27.00 per M sq.ft. f.o.b. Acme, Texas; Sweetwater, Texas; and Southard, Oklahoma.

(5) 1/2" Wallboard Exceptions:

(a) For shipment into states of New Mexico, Texas and Arkansas, also into Caddo, Bossier, De Soto, Red River, Bienville, Webster and Claiborne Counties, Louisiana, minimum price of 1/2" patented gypsum wallboard is

$26.00 per M sq.ft. f.o.b. Acme, Texas; Sweetwater, Texas; Southard, Oklahoma; and Ft. Dodge, Iowa. See paragraph (d) below.

(b) For shipment into state of Oklahoma, minimum price of 1/2" patented gypsum wallboard is $28.00 per M sq.ft. f.o.b. Acme, Texas; Sweetwater, Texas; and Southard, Oklahoma. See paragraph (d) below.

(c) For shipment into states of Louisiana (except counties as listed in (a) above), and into Kansas and Nebraska, minimum price of 1/2" patented gypsum wallboard is $29.50 per M sq. ft. f.o.b. Acme, Texas; Sweetwater, Texas; Southard, Oklahoma; and Fort Dodge, Iowa. See paragraph (d) below.

(d) Minimum prices for 1/2" patented gypsum sheathing, surfaced with a weather resisting paper, are not effective when sold for use as an exterior sheathing material on specific jobs, as such sales will be considered an experimental development of gypsum board in a new field, except:

9785 †For shipment into Cook, Lake, Du Page and McHenry counties, Illinois, also Lake and Porter counties, Indiana, the minimum price of 1/2" patented gypsum sheathing, Tongue and Groove edge, width 24", lengths 6'8" and 8', is $15.00 per M sq.ft. f.o.b. Grand Rapids, Michigan (Price for Porter County, Indiana effective March 16, 1936).

For shipment into Erie and Niagara counties, New York, the minimum price of 1/2" patented gypsum sheathing, Tongue and Groove edge, width 24", lengths 6'8" and 8', is $15.00 per M sq.ft. f.o.b. Oakfield, New York.

†For shipment into states of Oklahoma and Texas, the minimum price of 1/2" patented gypsum sheathing, Tongue and Groove edge, width 24", lengths 6'8" and 8', is $31.00 per M sq.ft. f.o.b. Acme, Texas; Sweetwater, Texas; and Southard, Oklahoma.

†For shipment into Cuyahoga County, Ohio, the minimum price of 1/2" patented gypsum sheathing is as stated in Supplement to Board License Bulletin No. 1, dated March 6, 1936.

†(6) 1/4" Plasterboard. The minimum price of 1/4" patented gypsum plasterboard is $15.00 per M sq. ft. f.o.b. Fort Dodge, Iowa or f.o.b. Seattle, Washington for shipment into that portion of Montana west of and includ-

ing Phillips, Petroleum, Musselshell, Yellowstone and Carbon Counties, also that portion of Idaho south and east of but not including Owyhee, Gooding, Elmore, Boise, Valley and Idaho Counties.

(7) 5/16" Plasterboard: The minimum price of 5/16" patented gypsum plasterboard (weight 1175# per M), in straight and pool carloads, or in mixed carloads with other gypsum products, for shipment into following markets only, is as follows:

†$15.00 per M sq. ft. f.o.b. cars delivered to dealers warehouse or siding in Marion County, Indiana (Indianapolis); Sangman County, Illinios (Springfield); Woodbury County, Iowa (Sioux City); Henrico County Virginia (Richmond); Norfolk County, Virginia (Norfolk); Roanoke County, Virginia (Roanoke); Hartford County, Connecticut (Hartford); Hampden County, Massachusetts (Springfield); Providence County, Rhode Island (Providence); Mercer County, New Jersey (Trenton); Lancaster County, Pennsylvania (Lancaster); Cuyahoga County (Cleveland) and towns of Willoughby and Wickliffe, Ohio; Oklahoma County, Oklahoma (Oklahoma City); Tulsa County, Oklahoma (Tulsa); also following towns in Missouri; St. Louis, Ferguson, Kinloch, Overland, Brentwood, Kirkwood, Jennings, Wellston, Clayton, Webster Groves, Maplewood, Gravois Station, Old Orchard and Lake Junction. See paragraph (8) for minimum quantity required for shipment in pool cars or mixed cars into Mercer County, New Jersey.

†$16.00 per M sq. ft. f.o.b. cars delivered to dealers warehouse or siding in towns of Kansas City, Dodson and Edgecomb, Missouri; also into towns of Rosedale, Waldo, Argentine, Westport, Overland Park and Kansas City, Kansas; also in Hennepin County, Minnesota (Minneapolis); Ramsay County, Minnesota (St. Paul); Lan-
9786 caster County, Nebraska (Lincoln); Buchanan County, Missouri (St. Joseph); Sedgwick County, Kansas (Wichita).

(8) 3/8" Plasterboard Exceptions:

(a) The minimum price of 3/8" patented gypsum plasterboard, in straight and pool carloads, or in mixed carloads with other gypsum products is $15.00 per M sq. ft. f.o.b. cars delivered to dealers warehouse or siding in

(Detroit Area) Wayne County, Michigan; towns of Birmingham, Clawson, Farmington, Ferndale and Royal Oak in Oakland County, Michigan; also towns of Warren, Halfway, Fraser, Roseville and Centerline in Macomb County, Michigan.

(b) The minimum price of 3/8" patented gypsum plasterboard is $15.00 per M sq. ft. f.o.b. Fort Dodge, Iowa or $17.50 per M sq. ft. f.o.b. Seattle, Washington for shipment into that portion of Montana west of and including Phillips, Petroleum, Musselshell, Yellowstone and Carbon Counties, also that portion of Idaho south and east of but not including Owyhee, Gooding, Elmore, Boise, Valley and Idaho Counties.

(9) In straight carloads of patented gypsum board and/or lath products, (except 5/16" thickness plasterboard—see par. 7) consigned to one destination and invoiced to one account, deduct $2.00 per M sq. ft. from f.o.b. Oakfield prices for shipment by rail to dealers warehouse or nearest siding in Metropolitan New York—New Jersey Area as follows: Manhattan, Bronx, Kings, Queens, Richmond, Westchester, Rockland, Nassau and Suffolk Counties, New York; Hudson, Essex, Union, Bergen, Passaic, Morris, Middlesex, Mercer, Somerset, Monmouth, Hunterdon, Warren, Sussex and Ocean Counties, New Jersey; also in Philadelphia Area as follows: Bucks, Montgomery, Chester, Delaware and Philadelphia Counties, Pennsylvania and Camden County, New Jersey.

Where any licensee or any of its employees, salesmen or executives has knowledge or notice, either directly or indirectly, that orders for less than straight car quantities of patented gypsum board products to be shipped into the above defined areas have been pooled for the purpose of or for effect of obtaining the reduced price for straight cars for each participant in the pool, licensor shall regard such sale as made at a price less than the minimum price fixed by the licensor and a violation of the terms of the license agreement.

(10) On pool cars or mixed cars into the Metropolitan New York—New Jersey Area and the Philadelphia Area as described in paragraph (9) above, minimum quantity is 5000 sq. ft. of patented gypsum board and/or lath products to one destination. Note: Any mixture of metallized and regular patented board products (in-

cluding special surfaced gypsum board products) may be combined to make up the required minimums.

9787 (11) Straight or mixed cars board f.o.b. dealers siding in switching limits of Grand Rapids, Michigan, add $1.00 per M sq. ft. to prices applying f.o.b. cars, Grand Rapids Mill.

(12) 24"x48" Cutstock Plasterboard: In states of Kansas, Missouri, Oklahoma, Arkansas, Mississippi and Alabama the minimum price is $17.50 per M. sq. ft. for 1/4" and 3/8" thicknesses and $18.75 per M sq. ft. for 1/2" thickness, f.o.b. Plasterco, Va., Grand Rapids, Mich., Fort Dodge, Ia., Southard, Okla., Sweetwater, Texas and Acme, Texas.

(13) 32"x48" Gypsum Board: In all areas 32"x48" gypsum board is subject to the minimum wallboard price except:

(a) Where used for specific roof jobs it is subject to the minimum plasterboard price for such specific jobs.

(b) In all states east of the Mississippi River and in the states of Iowa, Minnesota, Missouri, Nebraska, Colorado, Kansas, Oklahoma, Arkansas and Louisiana, 32"x48" board, if grey surfaced and round edged, is subject to minimum plasterboard price.

(14) 36"x48" Gypsum Board: 36"x48" is standard plasterboard size in all states for use on specific gypsum roof jobs only and is subject to minimum plasterboard price for such specific gypsum roof jobs.

(15) Minimum Price Cutstock Plasterboard for shipment to Niagara, Erie (including the town of Gowanda, New York) Monroe and Wayne Counties, N. Y.:

1/4" and 3/8"—$12.50 per M sq. ft. f.o.b. cars Oakfield, N. Y.

1/4" and 3/8"—$14.50 per M sq. ft. delivered by truck or picked up at Oakfield, N. Y.

NOTE: These prices do not apply 32"x48" board. See paragraph (13).

(16) For Texas Centennial (Dallas, Texas).

The minimum prices of patented gypsum wallboard, aluminum paint primed, one coat, both sides and four edges, for the Texas Centennial, Dallas, Texas, are as follows:

3/8" Gypsum Wallboard—$43.50 per M sq. ft. f.o.b. Sweetwater, Texas.

1/2" Gypsum Wallboard—44.50 per M sq. ft. f.o.b. Sweetwater, Texas.

Prices of same boards primed one side only, and four edges, are $4.50 per M sq. ft. less than minimum prices shown above.

9788 (17) Delivered carload minimum prices in certain suburbs same as in city proper, as indicated below:

Delivered Carload Minimum Prices in—	*Same as—*
College Park, Ga.	Atlanta, Ga.
Elkridge, and Glen Burnie, Maryland	Baltimore, Md.
Bristol, Tenn.	Bristol, Va.
Cook and DuPage counties, Ill.; Lake County, Indiana; also following towns in Lake County, Illinois: Deerfield, Highland Park and Lake Forest (all to be priced on rate of 13¢ per cwt. plus Emergency Charge regardless of minimum shipped)	Chicago, Ill.
Cheviot & Bridgetown, O.	Cincinnati, O.
Euclid, North Randall and Bedford, O.	Cleveland, O.
Wayne County; and towns of Birmingham, Clawson, Farmington, Ferndale and Royal Oak, in Oakland county; and Warren, Halfway, Fraser, Roseville, and Centerline in Macomb county, Michigan.	Detroit, Mich.
Dodson and Edgecomb, Mo.; Rosedale, Waldo, Argentine, Westport, Overland Park and Kansas City, Kansas.	Kansas City, Mo.
Kings County, N. Y.	Brooklyn, N. Y.
Ferguson, Kinlock, Overland, Brentwood, Kirkwood, Jennings, Wellston, Clayton, Webster Groves, Maplewood, Gravois Station, Old Orchard and Lake Junction, Mo.	St. Louis, Mo.
Armory, Indian Orchard, Oak Street and Chicopee, Mass.	Springfield, Mass.
South Windham, Maine	Portland, Maine
Gabe, Sheppard and Wilmont, Okla.	Oklahoma City, Okla.
Arlington Siding (Poughkeepsie), N. Y.	Poughkeepsie, N. Y.

(18) Sales to contractors and prefabricated house manufacturers, also extras on odd sizes:

On odd sizes and on sales to contractors, roofing contractors, metal ceiling contractors and prefabricated house manufacturers, add differentials per M sq. ft. as follows. (Note: Sales to roofing contractors are for specific roof jobs only):

To Dealers				To Contractors (Incl. Metal Ceiling Contrs.) & to Prefabricated House Mfrs.				To Roofing Contractors			
Std. Sizes		Odd Sizes		Std. Sizes		Odd Sizes		Std. Sizes		Odd Sizes	
W. Bd.	Pl. Bd.	W. Bd.	Pl. Bd.	W. Bd.	Pl. Bd.	W. Bd.	Pl. Bd.	W. Bd.	Pl. Bd.	W. Bd.	Pl. Bd.
—	—	2.50	1.25	2.50	1.25	5.00	2.50	1.25	1.25	1.25	1.25

Very truly yours,

UNITED STATES GYPSUM COMPANY,

——— ———, *Vice President.*

† Indicates change in this reissue.

9789 Illinois, also Lake and Porter counties, Indiana, the minimum price of 1/2" patented gypsum sheathing, Tongue and Groove edge, width 24", lengths 6'8" and 8', is $15.00 per M sq. ft. f.o.b. Grand Rapids, Michigan.

For shipment into Erie and Niagara counties, New York, the minimum price of 1/2" patented gypsum sheathing, Tongue and Groove edge, width 24", lengths 6'8" and 8', is $15.00 per M sq. ft. f.o.b. Oakfield, New York.

†For shipment into Queens and Nassau Counties, New York, also towns of Amityville, Huntington, Northport, Babylon, Lindenhurst, Bayshore and Cold Springs Harbor in Suffolk County, New York, the minimum price of 1/2" patented gypsum sheathing, Tongue and Groove edge, width 24", lengths 6'8" and 8' is $15.00 per M sq. ft. for shipment in straight carloads of patented gypsum board products, or $17.00 per M sq. ft. for shipment in pool cars or mixed cars, f.o.b. Oakfield, New York (this change effective April 1, 1936).

For shipment into states of Oklahoma and Texas, the minimum price of 1/2" patented gypsum sheathing, Tongue and Groove edge, width 24", lengths 6'8" and 8', is $31.00 per M sq. ft. f.o.b. Acme, Texas; Sweetwater, Texas; and Southard, Oklahoma.

For shipment into Cuyahoga county, Ohio, the minimum price of 1/2" patented gypsum sheathing is as stated in Supplement to Board License Bulletin No. 1, dated March 6, 1936.

(6) 1/4" Plasterboard: The minimum price of 1/4" patented gypsum plasterboard is $15.00 per M sq. ft. f.o.b. Fort Dodge, Iowa or f.o.b. Seattle, Washington for shipment into that portion of Montana west of and including Phillips, Petroleum, Musselshell, Yellowstone and Carbon Counties, also that portion of Idaho south and east of but not including Owyhee, Gooding, Elmore, Boise, Valley and Idaho counties.

(7) 5/16" Plasterboard: The minimum price of 5/16" patented gypsum plasterboard (weight 1175# per M), in straight and pool carloads, or in mixed carloads with other gypsum products, for shipment into following markets only, is as follows:

†$15.00 per M sq. ft.: f.o.b. cars delivered to dealers warehouse or siding in Marion County, Indiana (Indianapolis); Sangamon County, Illinois (Springfield); Wood-

bury County, Iowa (Sioux City); Princess Anne County, Virginia; Hanover County, Virginia; Henrico County, Virginia (Richmond); Norfolk County, Virginia (Norfolk); Roanoke County, Virginia (Roanoke); Hartford County, Connecticut (Hartford); Hampden County, Massachusetts (Springfield); Providence County, Rhode Island (Providence); Mercer County, New Jersey (Trenton); Lancaster County, Pennsylvania (Lancaster); Cuyahoga County (Cleveland) and towns of Willoughby and Wickliffe, Ohio; Oklahoma County, Oklahoma (Oklahoma City); Tulsa County, Oklahoma (Tulsa); also following towns in Missouri; St. Louis, Ferguson, Kinloch, Overland, Brentwood, Kirkwood, Jennings, Wellston, Clayton, Webster Groves, Maplewood, Gravois Station, Old Orchard and Lake Junction. See paragraph (10) for minimum quantity required for shipment in pool cars or mixed cars into Mercer County, New Jersey. (Price for Princess Anne and Hanover Counties, Virginia effective April 1, 1936).

$16.00 per M sq. ft. f.o.b. cars delivered to dealers warehouse or siding in towns of Kansas City, Dodson and Edgecomb, Missouri; also into towns of

9790 Rosedale, Waldo, Argentine, Westport, Overland Park and Kansas City, Kansas; also in Hennepin County, Minnesota (Minneapolis); Ramsay County, Minnesota (St. Paul); Lancaster County, Nebraska (Lincoln); Buchanan County, Missouri (St. Joseph); Sedgewick County, Kansas (Wichita).

(8) 3/8" Plasterboard Exceptions:

(a) The minimum price of 3/8" patented gypsum plasterboard, in straight and pool carloads, or in mixed carloads to dealers warehouse or siding in (Detroit Area) Wayne County, Michigan; towns of Birmingham, Clawson, Farmington, Ferndale and Royal Oak in Oakland County, Michigan; also towns of Warren, Halfway, Fraser, Roseville and Centerline in Macomb County, Michigan.

(b) The minimum price of 3/8" patented gypsum plasterboard is $15.00 per M sq. ft. f.o.b. Fort Dodge, Iowa or $17.50 per M sq. ft. f.o.b. Seattle, Washington for shipment into that portion of Montana west of and including Phillips, Petroleum, Musselshell, Yellowstone and Carbon Counties, also that portion of Idaho south and east of but

† Indicates change in this reissue.

not including Owyhee, Gooding, Elmore, Boise, Valley and Idaho Counties.

(9) In straight carloads of patented gypsum board and/or lath products, (except 5/16" thickness plasterboard —see par. 7) consigned to one destination and invoiced to one account, deduct $2.00 per M sq. ft. from f.o.b. Oakfield prices for shipment by rail to dealers warehouse or nearest siding in Metropolitan New York—New Jersey Area as follows: Manhattan, Bronx, Kings, Queens, Richmond, Westchester, Rockland, Nassau and Suffolk Counties, New York; Hudson, Essex, Union, Bergen, Passaic, Morris, Middlesex, Mercer, Somerset, Monmouth, Hunterdon, Warren, Sussex and Ocean Counties, New Jersey; also in Philadelphia Area as follows: Bucks, Montgomery, Chester, Delaware and Philadelphia Counties, Pennsylvania and Camden County, New Jersey.

Where any licensee or any of its employees, salesmen or executives has knowledge or notice, either directly or indirectly, that orders for less than straight car quantities of patented gypsum board products to be shipped into the above defined areas have been pooled for the purpose of or for effect of obtaining the reduced price for straight cars for each participant in the pool, licensor shall regard such sale as made at a price less than the minimum price fixed by the licensor and a violation of the terms of the license agreement.

(10) On pool cars or mixed cars into the Metropolitan New York—New Jersey Area and the Philadelphia Area as described in paragraph (9) above, minimum quantity is 5000 sq. ft. of patented gypsum board and/or lath products consigned to one destination and invoiced to one account. Note: Any mixture of metallized and regular patented board products (including special surfaced gypsum board products) may be combined to make up the required minimums.

9791 UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

APRIL 7, 1936.

Carload Shipments—Board License Bulletin No. 1 (Page 1)--Cancels Page 1 Dated March 14, 1936.

DEAR SIRS: Referring to our license contract with you, you are hereby notified that effective April 9, 1936 the minimum prices at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent); including Haggerty patent number 1,500,452 and Hite patent number 1,230,297, are as follows:

Patented gypsum wallboard and plasterboard products shall be quoted and sold on a delivered basis, f.o.b. cars destination. Delivered price is lowest combination of mill price plus freight, including emergency freight charge (see page 2) from that mill to destination. In stopover cars delivered price for any part of car is carload delivered price as above defined to point of delivery of that part of car. In every case rates as shown in published railroad freight tariffs apply. To determine board footage required to meet straight or mixed carload minimum weights, as shown in published railroad freight tariffs, use weights per M sq. ft. as shown below:

Dealer Prices f.o.b. cars: (Applying for standard sizes as listed in Bulletin No. 4)	¼" Gypsum Wallboard (Wt. 950# per M)	5/16" Gypsum Wallboard (Wt. 1175# per M) See Note *	⅜" Gypsum Wallboard (Wt. 1400# per M)	½" Gypsum Wallboard & ½" Gypsum Sheathing (Wt. 1900# per M)	½" Gypsum Wallboard (Wt. 3300# per M)	⅜" Tiled Gypsum Wallboard (Wt. 1400# per M)	¼" Gypsum Plasterboard (Wt. 950# per M)	⅜" Gypsum Plasterboard (Wt. 1400# per M)	½" Gypsum Plasterboard (Wt. 1900# per M)	⅝" Gypsum Plasterboard (Wt. 3300# per M)
Acme, Tex.	22.50	— —	28.50	31.00	— —	50.00	15.00	15.00	16.25	— —
Detroit, Mich.	— —	— —	— —	— —	— —	— —	— —	15.00	— —	— —
Fort Dodge, Iowa	22.50	— —	28.50	31.00	36.50	50.00	15.00	15.00	16.25	20.00
Grand Rapids, Mich.	22.50	— —	28.50	31.00	— —	50.00	15.00	15.00	16.25	— —
Gypsum, Ohio	22.50	26.50	28.50	31.00	36.50	50.00	15.00	15.00	16.25	20.00
Laramie, Wyo.	26.75	— —	34.75	— —	— —	56.25	— —	21.25	— —	— —
Loveland, Colo.	26.50	— —	34.50	39.00	— —	56.00	— —	21.00	— —	— —
Oakfield, N. Y.	22.50	26.50	28.50	31.00	36.50	50.00	15.00	15.00	16.25	20.00
Plasterco, Va.	22.50	— —	28.50	31.00	— —	50.00	15.00	15.00	16.25	— —
Southard, Okla.	22.50	— —	28.50	31.00	36.50	50.00	15.00	15.00	16.25	20.00
Sweetwater, Tex.	22.50	— —	28.50	31.00	— —	50.00	15.00	15.00	16.25	— —

* 5/16" Gypsum Wallboard is for sale to manufacturers only, for fabrication at their factories—not a dealer item.

9792. Emergency Freight Charges: The minimum delivered prices of patented gypsum wallboard and gypsum plasterboard are directly affected by the permissive order of the Interstate Commerce Commission authorizing an increase in freight rates. On Interstate traffic the freight increase becomes effective on the effective date of the Interstate tariff, and in Intrastate traffic the freight increase is effective when approved by the State Commission.

When emergency freight charges become effective the minimum delivered price of patented gypsum wallboard and gypsum plasterboard is to be the lowest combination of mill price plus freight, including emergency charge, from that mill to destination, as follows:

Where the minimum delivered price is the result of mill price plus Interstate freight, the increase is to be added on the effective date of the Interstate tariff.

Where the minimum delivered price is the result of mill price plus Intrastate freight, the increase is effective when approved by the State Commission.

The amount of increase in freight to be added to minimum f. o. b. mill prices of patented gypsum wallboard and gypsum plasterboard shall be as detailed in following schedule:

Opposite old rate, using the table below, is the proper new pricing rate, including emergency freight charge, in cents per 100 pounds:

Old rate	New rate	Old rate	New rate	Old rate	New rate
.05	.05	.18	.19	.31	.33
.055	.06	.185	.20	.315	.34
.06	.06	.19	.20	.32	.34
.065	.07	.195	.21	.325	.35
.07	.07	.20	.21	.33	.35
.075	.08	.205	.22	.335	.36
.08	.09	.21	.22	.34	.36
.085	.09	.215	.23	.345	.37
.09	.10	.22	.24	.35	.37
.095	.10	.225	.24	.355	.38
.10	.11	.23	.25	.36	.39
.105	.11	.235	.25	.365	.39
.11	.12	.24	.26	.37	.40
.115	.12	.245	.26	.375	.40
.12	.13	.25	.27	.38	.41
.125	.13	.255	.27	.385	.41
.13	.14	.26	.28	.39	.42
.135	.14	.265	.28	.395	.42
.14	.15	.27	.29	.40	.43
.145	.16	.275	.29	.405	.43
.15	.16	.28	.30	.41	.44
.155	.17	.285	.30	.415	.44
.16	.17	.29	.31	.42	.45
.165	.18	.295	.32	.425	.45
.17	.18	.30	.32	.43	.46
.175	.19	.305	.33		

On all old rates over 43¢ per cwt. to secure new rate add flat 3¢ per cwt. (.435 becomes .465, .44 becomes .47, etc.)

9793 Stopover, switching and other extra delivery Charges:

All stopover charges, switching charges and other extra delivery charges, including full Emergency Increase applicable to such charges, will be paid by customers. Exception: Stopover charges need not be included on shipments into the states of Michigan, Wisconsin, Illinois, Indiana, Ohio, Kansas, Missouri, Arkansas, Oklahoma, Iowa, Minnesota, North Dakota, South Dakota, Texas, Nebraska, Kentucky, Montana, Colorado and Wyoming.

The above prices apply to the sale of all board embodying the claims of our patents in all markets except where an exception is made as hereinafter expressly stated:

(1) Until further notice the above minimum prices shall not apply to sales of patented gypsum wallboard and gypsum plasterboard products for shipment to or delivery in the following area: States of California, Arizona, Nevada, Utah, Idaho, Oregon and Washington, also that portion of state of Montana west of and including Phillips, Petroleum, Musselshell, Yellowstone and Carbon Counties.

(2) In the states of Illinois and Wisconsin, to all destinations where a 60,000 lbs. minimum (from Fort Dodge or Grand Rapids) is in effect, delivered prices of patented board and/or lath, in pool cars, stopover cars, straight cars or mixed cars with other gypsum products, will be mill base price plus 60,000 lb. rate, regardless of minimum shipped. Rate applying to 80,000 lbs. minimum out of Fort Dodge or Grand Rapids into these states will be used in pricing patented board and/or lath in carloads or pool cars consigned to a single destination only, with the exception that shipments to the City of Superior, Wisconsin may be priced on the 80,000 lb. rate when included in 80,000 lb. stopover cars with shipments for the Twin Cities, Duluth and Steelton, Minnesota.

(3) 1/4" Wallboard Exceptions:

(a) For shipment into state of New Mexico and that portion of Montana east of but not including Phillips, Petroleum, Musselshell, Yellowstone and Carbon Counties, minimum price of 1/4" patented gypsum wallboard is $20.00 per M sq. ft. f.o.b. Acme, Texas; Sweetwater, Texas; Southard, Oklahoma and Fort Dodge, Iowa; or $24.25 per M sq. ft. f.o.b. Laramie, Wyoming.

(b) For shipment into states of Arkansas, Louisiana, Mississippi, Alabama, Georgia, South Carolina and Florida, also into Hamilton County only in state of Tennessee minimum price of 1/4" patented gypsum wallboard is $21.00 per M sq. ft. f.o.b. Acme, Texas; Sweetwater, Texas; Southard, Oklahoma; Fort Dodge, Iowa; Grand Rapids, Michigan; and Plasterco, Virginia.

(4) 3/8" Wallboard Exceptions:

(a) For shipment into states of New Mexico, 9794 Texas, Arkansas, Louisiana, Mississippi, Alabama, Georgia, South Carolina, and Florida also into Hamilton County only in state of Tennessee minimum price of 3/8" patented gypsum wallboard is $25.00 per M sq. ft. f.o.b. Acme, Texas; Sweetwater, Texas; Southard, Oklahoma; Fort Dodge, Iowa; Grand Rapids, Michigan; and Plasterco, Virginia.

(b) For shipment into state of Oklahoma, minimum price of 3/8" patented gypsum wallboard is $27.00 per M sq. ft. f.o.b. Acme, Texas; Sweetwater, Texas; and Southard, Oklahoma.

(5) 1/2" Wallboard Exceptions:

(a) For shipment into states of New Mexico, Texas and Arkansas, also into Caddo, Bossier, De Soto, Red River, Bienville, Webster and Claiborne Counties, Louisiana, minimum price of 1/2" patented gypsum wallboard is $26.00 per M sq. ft. f.o.b. Acme, Texas; Sweetwater, Texas; Southard, Oklahoma; and Ft. Dodge, Iowa. See paragraph (d) below.

(b) For shipment into state of Oklahoma, minimum price of 1/2" patented gypsum wallboard is $28.00 per M sq. ft. f.o.b. Acme, Texas; Sweetwater, Texas; and Southard, Oklahoma. See paragraph (d) below.

(c) For shipment into states of Louisiana (except counties as listed in (a) above), and into Kansas and Nebraska, minimum price of 1/2" patented gypsum wallboard is $29.50 per M sq. ft. f.o.b. Acme, Texas; Sweetwater, Texas; Southard, Oklahoma; and Fort Dodge, Iowa. See paragraph (d) below.

(d) Minimum prices for 1/2" patented gypsum sheathing, surfaced with a weather resisting paper, are not effective when sold for use as an exterior sheathing material on specific jobs, as such sales will be considered an experi-

mental development of gypsum board in a new field, except:

—For shipment into Cook, Lake, Du Page and McHenry Counties, Illinois, also Lake and Porter Counties, Indiana, the minimum price of 1/2" patented gypsum sheathing, Tongue and Groove edge, width 24", lengths 6'8" and 8', is $15.00 per M sq. ft. f.o.b. Grand Rapids, Michigan.

—For shipment into Erie and Niagara counties, New York, the minimum price of 1/2" patented gypsum sheathing, Tongue and Groove edge, width 24", lengths 6'8" and 8', is $15.00 per M sq. ft. f.o.b. Oakfield, New York.

—For shipment into Queens and Nassau counties, New York, also towns of Amityville, Huntington, Northport, Babylon, Lindenhurst, Bayshore and Cold Springs Harbor in Suffolk County, New York, the minimum price of 1/2" patented gypsum sheathing, Tongue and Groove edge, width 24", lengths 6'8" and 8' is $15.00 per M sq. ft. for shipment in straight carloads of patented gypsum board produets, or $17.00 per M sq. ft. for shipment in pool cars or mixed cars, f.o.b. Oakfield, New York.

9795 —For shipment into states of Oklahoma and Texas, the minimum price of 1/2" patented gypsum sheathing, Tongue and Groove edge, width 24", lengths 6'8" and 8', is $31.00 per M sq. ft. f.o.b. Acme, Texas; Sweetwater, Texas; and Southard, Oklahoma.

—For shipment into Cuyahoga county, Ohio, the minimum price of 1/2" patented gypsum sheathing is as stated in Supplement to Board License Bulletin No. 1, dated March 6, 1936.

(6) 5/16" Plasterboard. The minimum price of 5/16" patented gypsum plasterboard (weight 1175# per M), in straight and pool carloads, or in mixed carloads with other gypsum products, for shipment into following markets only, is as follows:

†(a) $15.00 per M sq. ft. f.o.b. cars delivered to dealers warehouse or siding in the following markets:

—Cuyahoga County (Cleveland) and towns of Willoughby and Wickliffe, Ohio.

†—Douglas County, Nebraska (Omaha).

—Hampden County, Massachusetts (Springfield).

—Hanover County, Virginia.

—Hartford County, Connecticut (Hartford).

†—Hennepin County, Minnesota (Minneapolis).

—Henrico County, Virginia (Richmond).
—Lancaster County, Pennsylvania (Lancaster).
—Marion County, Indiana (Indianapolis).
—Mercer County, New Jersey (Trenton).
—Norfolk County, Virginia (Norfolk).
—Oklahoma County, Oklahoma (Oklahoma City).
†—Peoria County, Illinois (Peoria).
†—Pottawatomie County, Iowa (Council Bluffs).
—Princess Anne County, Virginia.
—Providence County, Rhode Island, (Providence).
†—Ramsey County, Minnesota (St. Paul).
—Roanoke County, Virginia (Roanoke).
—Sangamon County, Illinois (Springfield).
—Tulsa County, Oklahoma (Tulsa).
—Woodbury County, Iowa (Sioux City).

also following towns in Missouri: St. Louis, Ferguson, Kinloch, Overland, Brentwood, Kirkwood, Jennings, Wellston, Clayton, Webster Groves, Maplewood, Gravois Station, Old Orchard, and Lake Junction.

See paragraph (9) for minimum quantity required for shipment in pool cars or mixed cars into Mercer County, New Jersey.

†(b) $16.00 per M sq. ft. f.o.b. cars delivered to dealers warehouse or siding in the following markets:

—Buchanan County, Missouri (St. Joseph).
†—Cass County, North Dakota (Fargo).
9796 †—Greene County, Missouri (Springfield).
†—Jasper County, Missouri (Joplin).
—Lancaster County, Nebraska (Lincoln).
†—Minnehaha County, South Dakota (Sioux Falls).
†—Newton County, Missouri (Joplin).
—Sedgewick County, Kansas (Wichita)

also towns of Kansas City, Dodson and Edgecomb, Missouri, and Rosedale, Waldo, Argentine, Westport, Overland Park and Kansas City, Kansas.

(7) 3/8" Plasterboard Exceptions:

(a) The minimum price of 3/8" patented gypsum plasterboard, in straight and pool carloads, or in mixed carloads with other gypsum products is $15.00 per M sq. ft. f.o.b. cars delivered to dealers warehouse or siding in (Detroit Area) Wayne County, Michigan; towns of Birmingham, Clawson, Farmington, Ferndale and Royal Oak in

Oakland County, Michigan; also towns of Warren, Halfway, Fraser, Roseville and Centerline in Macomb County, Michigan.

(8) In straight carloads of patented gypsum board and/or lath products, (except 5/16" thickness plasterboard —see par. 6) consigned to one destination and invoiced to one account, deduct $2.00 per M sq. ft. from f.o.b. Oakfield prices for shipment by rail to dealers warehouse or nearest siding in Metropolitan New York—New Jersey Area as follows: Manhattan, Bronx, Kings, Queens, Richmond, Westchester, Rockland, Nassau and Suffolk counties, New York; Hudson, Essex, Union, Bergen, Passaic, Morris, Middlesex, Mercer, Somerset, Monmouth, Hunterdon, Warren, Sussex, and Ocean counties, New Jersey; also in Philadelphia Area as follows: Bucks, Montgomery, Chester, Delaware and Philadelphia counties, Pennsylvania and Camden county, New Jersey.

Where any licensee or any of its employees, salesmen or executives has knowledge or notice, either directly or indirectly, that orders for less than straight car quantities of patented gypsum board products to be shipped into the above defined areas have been pooled for the purpose of or for effect of obtaining the reduced price for straight cars for each participant in the pool, licensor shall regard such sale as made at a price less than the minimum price fixed by the licensor and a violation of the terms of the license agreement.

(9) On pool cars or mixed cars into the Metropolitan New York—New Jersey Area and the Philadelphia Area as described in paragraph (8) above, minimum quantity is 5000 sq. ft. of patented gypsum board and/or lath products consigned to one destination and invoiced to one account. Note: Any mixture of metallized and regular patented board products (including special surfaced gypsum board products) may be combined to make up the required minimums.

9797 (10) Straight or mixed cars board f.o.b. dealers siding in switching limits of Grand Rapids, Michigan, add $1.00 per M sq. ft. to prices applying f.o.b. cars, Grand Rapids Mill.

(11) 24"x48" Cutstock Plasterboard. In states of Kansas, Missouri, Oklahoma, Arkansas, Mississippi and Alabama the minimum price is $17.50 per M sq. ft. for 1/4" and

3/8" thicknesses and $18.75 per M sq. ft. for 1/2" thickness, f.o.b. Plasterco, Va., Grand Rapids, Mich., Fort Dodge, Iowa; Southard, Oklahoma; Sweetwater, Texas and Acme, Texas.

(12) 32"x48" Gypsum Board. In all areas 32"x48" gypsum board is subject to the minimum wallboard price except:

(a) Where used for specific roof jobs it is subject to the minimum plasterboard price for such specific jobs.

(b) In all states east of the Mississippi River and in the states of Iowa, Minnesota, Missouri, Nebraska, Colorado, Kansas, Oklahoma, Arkansas and Louisiana, 32"x48" board, if grey surfaced and round edged, is subject to minimum plasterboard price.

(13) 36"x48" Gypsum Board. 36"x48" is standard plasterboard size in all states for use on specific gypsum roof jobs only and is subject to minimum plasterboard price for such specific gypsum roof jobs.

(14) Minimum price 1/4" and 3/8" Cutstock Plasterboard for shipment to Niagara, Erie (including the town of Gowanda, New York) Monroe and Wayne Counties, N. Y. is $12.50 per M sq. ft. f.o.b. cars Oakfield, N. Y.

This price does not apply to 32"x48" board. See paragraph (12).

(15) For Texas Centennial (Dallas, Texas).

The minimum prices of patented gypsum wallboard, aluminum paint primed, one coat, both sides and four edges, for the Texas Centennial, Dallas, Texas, are as follows:

3/8" Gypsum Wallboard—$43.50 per M sq. ft. f.o.b. Sweetwater, Texas.
1/2" Gypsum Wallboard—44.50 per M sq. ft. f.o.b. Sweetwater, Texas.

Prices of same boards primed one side only, and four edges, are $4.50 per M sq. ft. less than minimum prices shown above.

9798 (16) Delivered carload minimum prices in certain suburbs same as in city proper, as indicated below:

Delivered Carload Minimum Prices in—	*Same as—*
College Park, Ga.	Atlanta, Ga.
Elkridge, and Glen Burnie, Maryland	Baltimore, Md.
Bristol, Tenn.	Bristol, Va.
Cook and DuPage counties, Ill.; Lake County, Indiana; also following towns in Lake County, Illinois: Deerfield, Highland Park and Lake Forest (all to be priced on rate of 13¢ per cwt. plus Emergency Charge regardless of minimum shipped)	Chicago, Ill.
Cheviot & Bridgetown, O.	Cincinnati, O.
Euclid, North Randall and Bedford, O.	Cleveland, O.
Wayne County; and towns of Birmingham, Clawson, Farmington, Ferndale and Royal Oak, in Oakland county; and Warren, Halfway, Fraser, Roseville, and Centerline in Macomb county, Michigan.	Detroit, Mich.
Dodson and Edgecomb, Mo.; Rosedale, Waldo, Argentine, Westport, Overland Park and Kansas City, Kansas.	Kansas City, Mo.
Kings County, N. Y.	Brooklyn, N. Y.
Ferguson, Kinlock, Overland, Brentwood, Kirkwood, Jennings, Wellston, Clayton, Webster Groves, Maplewood, Gravois Station, Old Orchard and Lake Junction, Mo.	St. Louis, Mo.
Armory, Indian Orchard, Oak Street and Chicopee, Mass.	Springfield, Mass.
South Windham, Maine	Portland, Maine
Gabe, Sheppard and Wilmont, Okla.	Oklahoma City, Okla.
Arlington Siding (Poughkeepsie), N. Y.	Poughkeepsie, N. Y.

(17) Sales of contractors and prefabricated house manufacturers, also extras on odd sizes:

On odd sizes and on sales to contractors, roofing contractors, metal ceiling contractors and prefabricated house manufacturers, add differentials per M sq. ft. as follows. (Note: Sales to roofing contractors are for specific roof jobs only):

To Dealers				To Contractors (Incl. Metal Ceiling Contrs.) & to Prefabricated House Mfrs.				To Roofing Contractors			
Std. Sizes		Odd Sizes		Std. Sizes		Odd Sizes		Std. Sizes		Odd Sizes	
W. Bd.	Pl. Bd.	W. Bd.	Pl. Bd.	W. Bd.	Pl. Bd.	W. Bd.	Pl. Bd.	W. Bd.	Pl. Bd.	W. Bd.	Pl. Bd.
—	—	2.50	1.25	2.50	1.25	5.00	2.50	1.25	1.25	1.25	1.25

Very truly yours,

UNITED STATES GYPSUM COMPANY,

———— ————, *Vice President.*

† Indicates change in this reissue.

9799 —Greene County, Missouri (Springfield).
—Jasper County, Missouri (Joplin).
—Lancaster County, Nebraska (Lincoln).
—Minnehaha County, South Dakota (Sioux Falls).
—Newton County, Missouri (Joplin).
—Sedgewick County, Kansas (Wichita).

also towns of Kansas City; Dodson and Edgecomb, Missouri, and Rosedale, Waldo, Argentine, Westport, Overland Park and Kansas City, Kansas.

(7) 3/8" Plasterboard Exceptions:

(a) The minimum price of 3/8" patented gypsum plasterboard, in straight and pool carloads, or in mixed carloads with other gypsum products is $15.00 per M sq. ft. f.o.b. cars delivered to dealers warehouse or siding in (Detroit Area) Wayne County, Michigan; towns of Birmingham, Clawson, Farmington, Ferndale and Royal Oak in Oakland County, Michigan; also towns of Warren, Halfway, Fraser, Roseville and Centerline in Macomb County, Michigan.

(b) The minimum price of 3/8" patented gypsum plasterboard, in straight and pool carloads, or in mixed carloads with other gypsum products is $21.87 per M sq. ft. f.o.b. cars delivered to dealers warehouse or siding in Palm Beach, Dade, Broward and Monroe Counties, Florida. (This change effective April 13, 1936)

(8) In straight carloads of patented gypsum board and/or lath products, (except 5/16" thickness plasterboard —see par. 6) consigned to one destination and invoiced to one account, deduct $2.00 per M sq. ft. from f.o.b. Oakfield prices for shipment by rail to dealers warehouse or nearest siding in Metropolitan New York—New Jersey Area as follows: Manhattan, Bronx, Kings, Queens, Richmond, Westchester, Rockland, Nassau and Suffolk counties, New York; Hudson, Essex, Union, Bergen, Passaic, Morris, Middlesex, Mercer, Somerset, Monmouth, Hunterdon, Warren, Sussex, and Ocean counties, New Jersey; also in Philadelphia Area as follows: Bucks, Montgomery, Chester, Delaware and Philadelphia counties, Pennsylvania and Camden county, New Jersey.

Where any licensee or any of its employees, salesmen or executives has knowledge or notice, either directly or indirectly, that orders for less than straight car quantities of patented gypsum board products to be shipped into the above defined areas have been pooled for the purpose of or

for effect of obtaining the reduced price for straight cars for each participant in the pool, licensor shall regard such sale as made at a price less than the minimum price fixed by the licensor and a violation of the terms of the license agreement.

(9) On pool cars or mixed cars into the Metropolitan New York—New Jersey Area and the Philadelphia Area as described in paragraph (8) above, minimum quantity is 5000 sq. ft. of patented gypsum board and/or lath products consigned to one destination and invoiced to one account. Note: Any mixture of metallized and regular patented board products (including special surfaced gypsum board products) may be combined to make up the required minimums.

9800 UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

MAY 4, 1936.

Carload Shipments
Board License Bulletin No. 1 (Page 1)—Cancels Page 1
Dated April 7, 1936.

DEAR SIRS: Referring to our license contract with you, you are hereby notified that effective May 7, 1936 the minimum prices at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent); including Haggerty patent number 1,500,452 and Hite patent number 1,230,297, are as follows:

Patented gypsum wallboard and plasterboard products shall be quoted and sold on a delivered basis, f.o.b. cars destination. Delivered price is lowest combination of mill price plus freight, including emergency freight charge (see page 2) from that mill to destination. In stopover cars delivered price for any part of car is carload delivered price as above defined to point of delivery of that part of car. In every case rates as shown in published railroad freight tariffs apply. To determine board footage required to meet straight or mixed carload minimum weights, as shown in published railroad freight tariffs, use weights per M sq. ft. as shown below:

Dealer Prices f.o.b. cars: (Applying for standard sizes as listed in Bulletin No. 4)	1/4" Gypsum Wallboard (Wt. 950 # per M)	5/16" Gypsum Wallboard (Wt. 1175 per M) See Note *	3/8" Gypsum Wallboard (Wt. 1400 # per M)	1/2" Gypsum Wallboard (Wt. 1900 # per M)	1/2" Gypsum Sheathing (Wt. 1900 # per M)	3/4" Gypsum Wallboard (Wt. 3300 # per M)	3/8" Tiled Gypsum Wallboard (Wt. 1400 # per M)	1/4" Gypsum Plasterboard (Wt. 950 # per M)	3/8" Gypsum Plasterboard (Wt. 1400 # per M)	1/2" Gypsum Plasterboard (Wt. 1900 # per M)	3/4" Gypsum Plasterboard (Wt. 3300 # per M)
†Acme, Tex.	22.50	— —	28.50	31.00	22.00	— —	50.00	15.00	15.00	16.25	— —
†Boston (Charlestown) Mass.	22.50	— —	28.50	31.00	22.00	— —	50.00	15.00	15.00	16.25	— —
†Detroit, Mich.	22.50	— —	28.50	31.00	22.00	— —	50.00	15.00	15.00	16.25	— —
†East Chicago, Ind.	22.50	— —	28.50	31.00	22.00	36.50	50.00	15.00	15.00	16.25	20.00
†Fort Dodge, Iowa	22.50	— —	28.50	31.00	22.00	— —	50.00	15.00	15.00	16.25	— —
†Grand Rapids, Mich.	22.50	26.50	28.50	31.00	22.00	36.50	50.00	15.00	15.00	16.25	20.00
†Gypsum, Ohio	26.75	— —	34.75	— —	— —	— —	56.25	— —	21.25	— —	— —
Laramie, Wyo.	26.50	— —	34.50	39.00	— —	— —	56.00	— —	21.00	— —	— —
Loveland, Colo.	22.50	— —	28.50	31.00	22.00	— —	50.00	15.00	15.00	16.25	— —
†New Brighton, L. I., N. Y.	22.50	26.50	28.50	31.00	22.00	36.50	50.00	15.00	15.00	16.25	20.00
†Oakfield, N. Y.	22.50	— —	28.50	31.00	22.00	— —	50.00	15.00	15.00	16.25	— —
†Philadelphia, Pa.	22.50	— —	28.50	31.00	22.00	— —	50.00	15.00	15.00	16.25	— —
†Plasterco, Va.	22.50	— —	28.50	31.00	22.00	36.50	50.00	15.00	15.00	16.25	20.00
†Southard, Okla.	22.50	— —	28.50	31.00	22.00	— —	50.00	15.00	15.00	16.25	— —
†Sweetwater, Tex.	22.50	— —	28.50	31.00	22.00	— —	50.00	15.00	15.00	16.25	— —

* 5/16" Gypsum Wallboard is for sale to manufacturers only, for fabrication at their factories—not a dealer item.

9801 Emergency Freight Charges: The minimum delivered prices of patented gypsum wallboard and gypsum plasterboard are directly affected by the permissive order of the Interstate Commerce Commission authorizing an increase in freight rates. On Interstate traffic the freight increase becomes effective on the effective date of the Interstate tariff, and in Intrastate traffic the freight increase is effective when approved by the State Commission.

When emergency freight charges become effective the minimum delivered price of patented gypsum wallboard and gypsum plasterboard is to be the lowest combination of mill price plus freight, including emergency charge, from that mill to destination, as follows:

Where the minimum delivered price is the result of mill price plus Interstate freight, the increase is to be added on the effective date of the Interstate tariff.

Where the minimum delivered price is the result of mill price plus Intrastate freight, the increase is effective when approved by the State Commission.

The amount of increase in freight to be added to minimum f. o. b. mill prices of patented gypsum wallboard and gypsum plasterboard shall be as detailed in following schedule:

Opposite old rate, using the table below, is the proper new pricing rate, including emergency freight charge, in cents per 100 pounds:

Old rate	New rate	Old rate	New rate	Old rate	New rate
.05	.05	.18	.19	.31	.33
.055	.06	.185	.20	.315	.34
.06	.06	.19	.20	.32	.34
.065	.07	.195	.21	.325	.35
.07	.07	.20	.21	.33	.35
.075	.08	.205	.22	.335	.36
.08	.09	.21	.22	.34	.36
.085	.09	.215	.23	.345	.37
.09	.10	.22	.24	.35	.37
.095	.10	.225	.24	.355	.38
.10	.11	.23	.25	.36	.39
.105	.11	.235	.25	.365	.39
.11	.12	.24	.26	.37	.40
.115	.12	.245	.26	.375	.40
.12	.13	.25	.27	.38	.41
.125	.13	.255	.27	.385	.41
.13	.14	.26	.28	.39	.42
.135	.14	.265	.28	.395	.42
.14	.15	.27	.29	.40	.43
.145	.16	.275	.29	.405	.43
.15	.16	.28	.30	.41	.44
.155	.17	.285	.30	.415	.44
.16	.17	.29	.31	.42	.45
.165	.18	.295	.32	.425	.45
.17	.18	.30	.32	.43	.46
.175	.19	.305	.33		

On all old rates over 43¢ per cwt. to secure new rate add flat 3¢ per cwt. (.435 becomes .465, .44 becomes .47, etc.)

9802 Stopover, Switching and Other Extra Delivery Charges:

All stopover charges, switching charges and other extra delivery charges, including full Emergency Increase applicable to such charges, will be paid by customers. Exception: Stopover charges need not be included on shipments into the states of Michigan, Wisconsin, Illinois, Indiana, Ohio, Kansas, Missouri, Arkansas, Oklahoma, Iowa, Minnesota, North Dakota, South Dakota, Texas, Nebraska, Kentucky, Montana, Colorado and Wyoming.

The above prices apply to the sale of all board embodying the claims of our patents in all markets except where an exception is made as hereinafter expressly stated:

(1) Until further notice the above minimum prices shall not apply to sales of patented gypsum wallboard and gypsum plasterboard products for shipment to or delivery in the following area: States of California, Arizona, Nevada, Utah, Idaho, Oregon and Washington, also that portion of State of Montana west of and including Phillips, Petroleum, Musselshell, Yellowstone and Carbon Counties.

(2) In the states of Illinois and Wisconsin, to all destinations where a 60,000 lb. minimum (from Ft. Dodge, East Chicago or Grand Rapids) is in effect, delivered prices of patented board and/or lath, in pool cars, stopover cars, straight cars or mixed cars with other gypsum products, will be mill base price plus 60,000 lb. rate, regardless of minimum shipped. Rate applying to 80,000 lbs. minimum out of Fort Dodge or Grand Rapids into these states will be used in pricing patented board and/or lath in carloads or pool cars consigned to a single destination only, with the exception that shipments to the City of Superior, Wisconsin may be priced on the 80,000 lb. rate when included in 80,000 lb. stopover cars with shipments for the Twin Cities, Duluth and Steelton, Minnesota.

(3) 1/4" Wallboard Exceptions:

(a) For shipment into state of New Mexico and that portion of Montana east of but not including Phillips, Petroleum, Musselshell, Yellowstone and Carbon Counties, minimum price of 1/4" patented gypsum wallboard is $20.00 per M sq. ft. f.o.b. Acme, Texas; Sweetwater, Texas; Southard, Oklahoma and Fort Dodge, Iowa; or $24.25 per M sq. ft. f.o.b. Laramie, Wyoming.

†(b) For shipment into states of Arkansas, Louisiana, Mississippi, Alabama, Georgia, South Carolina and Florida, also into Hamilton County only in state of Tennessee minimum price of 1/4" patented gypsum wallboard is $21.00 per M sq. ft. f.o.b. Acme, Texas; Sweetwater, Texas; Southard, Oklahoma; Fort Dodge, Iowa; Grand Rapids, Michigan; East Chicago, Indiana; Gypsum, Ohio; and Plasterco, Virginia.

(4) 3/8" Wallboard Exceptions:

†(a) For shipment into states of New Mexico, 9803 Texas, Arkansas, Louisiana, Mississippi, Alabama, Georgia, South Carolina and Florida also into Hamilton County only in state of Tennessee minimum price of 3/8" patented gypsum wallboard is $25.00 per M sq. ft. f.o.b. Acme, Texas; Sweetwater, Texas; Southard, Oklahoma; Fort Dodge, Iowa; Grand Rapids, Michigan; East Chicago, Indiana; Gypsum, Ohio; and Plasterco, Virginia.

(b) For shipment into state of Oklahoma, minimum price of 3/8" patented gypsum wallboard is $27.00 per M sq. ft. f.o.b. Acme, Texas; Sweetwater, Texas; and Southard, Oklahoma.

(5) 1/2" Wallboard Exceptions:

(a) For shipment into states of New Mexico, Texas and Arkansas, also into Caddo, Bossier, De Soto, Red River, Bienville, Webster and Claiborne Counties, Louisiana, minimum price of 1/2" patented gypsum wallboard is $26.00 per M sq. ft. f.o.b. Acme, Texas; Sweetwater, Texas; Southard, Oklahoma; and Fort Dodge, Iowa.

(b) For shipment into state of Oklahoma, minimum price of 1/2" patented gypsum wallboard is $28.00 per M sq. ft. f.o.b. Acme, Texas; Sweetwater, Texas; and Southard, Oklahoma.

(c) For shipment into states of Louisiana (except counties as listed in (a) above), and into Kansas and Nebraska, minimum price of 1/2" patented gypsum wallboard is $29.50 per M sq. ft. f.o.b. Acme, Texas; Sweetwater, Texas; Southard, Oklahoma; and Fort Dodge, Iowa.

(d) For shipment into Cuyahoga County, Ohio, the minimum price of 1/2" patented gypsum wallboard is as stated in supplement to Board License Bulletin No. 1, dated March 6, 1936.

†(6) 1/2" T&G Sheating Exceptions:

†(a) For shipment into Cook, Du Page and McHenry Counties, Illinois, also Lake and Porter Counties, Indiana in straight and pool carloads or in mixed carloads with other gypsum products, the minimum price of 1/2" patented gypsum sheathing is $17.66 per M sq. ft. f.o.b. cars delivered to dealers' warehouse or siding.

†(b) For shipment into Allegheny County (Pittsburgh) Pennsylvania in straight and pool carloads or in mixed carloads with other gypsum products, the minimum price of 1/2" patented gypsum sheathing is $21.42 per M sq. ft. f.o.b. cars delivered to dealers' warehouse or siding.

†(c) For shipment into Wayne County, Michigan, towns of Birmingham, Clawson, Farmington, Ferndale and Royal Oak in Oakland County, Michigan; also towns of Warren, Halfway, Fraser, Roseville and Centerline in Macomb County, Michigan, in straight and pool carloads or in mixed carloads with other gypsum products, the minimum price of 1/2" patented gypsum sheathing is $20.47 per M sq. ft. f.o.b. cars delivered to dealers' warehouse or siding.

†(d) For shipment into Orange, Ulster, Sullivan, Putnam and Dutchess Counties, New York, in straight and pool carloads or in mixed carloads with other gypsum products, the minimum price of 1/2" patented gypsum sheathing is $24.80 per M sq. ft. f.o.b. cars delivered to dealers' warehouse or siding.

9804 †(e) For shipment into Queens and Nassau counties, New York, also towns of Amityville, Huntington, Northport, Babylon, Lindenhurst, Bayshore and Cold Springs Harbor in Suffolk County, New York, the minimum price of 1/2" patented gypsum sheathing is $19.00 per M sq. ft. for shipment in straight carloads of patented gypsum board products consigned to one destination and invoiced to one account, or $21.00 per M sq. ft. for shipment in pool cars or mixed cars, f.o.b. cars delivered to dealers' warehouse or siding.

(f) For shipment into Erie and Niagara counties, New York, the minimum price of 1/2" patented gypsum sheathing is $15.00 per M sq. ft. f.o.b. Oakfield, New York.

†(g) For shipment into state of Texas, also into Caddo, Bossier, De Soto, Red River, Bienville, Webster and Claiborne Counties, Louisiana, the minimum price of 1/2"

patented gypsum sheathing is $26.00 per M sq. ft. f.o.b. Acme, Texas; Sweetwater, Texas; and Southard, Oklahoma.

†(h) For shipment into State of Oklahoma, the minimum price of 1/2" patented gypsum sheathing is $28.00 per M sq. ft. f.o.b. Acme, Texas; Sweetwater, Texas; and Southard, Oklahoma.

(i) For shipment into Cuyahoga County, Ohio, the minimum price of 1/2" patented gypsum sheathing is as stated in Supplement to Board License Bulletin No. 1, dated March 6, 1936.

(7) 5/16" Plasterboard. The minimum price of 5/16" patented gypsum plasterboard (weight 1175# per M), in straight and pool carloads, or in mixed carloads with other gypsum products, for shipment into following markets only, is as follows:

†(a) $14.68 per M sq. ft. f.o.b. cars delivered to dealers' warehouse or siding in Mercer County, New Jersey (Trenton).

(b) $15.00 per M sq. ft. f.o.b. cars delivered to dealers' warehouse or siding in the following markets:

—Cuyahoga County (Cleveland) and towns of Willoughby and Wickliffe, Ohio.
—Douglas County, Nebraska, (Omaha).
—Hampden County, Massachusetts (Springfield).
—Hanover County, Virginia.
—Hartford County, Connecticut (Hartford).
—Hennepin County, Minnesota (Minneapolis).
—Henrico County, Virginia (Richmond).
—Lancaster County, Pennsylvania (Lancaster).
—Marion County, Indiana (Indianapolis).
—Norfolk County, Virginia (Norfolk).
—Oklahoma County, Oklahoma (Oklahoma City).
—Peoria County, Illinois (Peoria).
—Pottawatomie County, Iowa (Council Bluffs).
—Princess Anne County, Virginia.
—Providence County, Rhode Island, (Providence).
—Ramsey County, Minnesota (St. Paul).
—Roanoke County, Virginia (Roanoke).
—Sangamon County, Illinois (Springfield).
—Tulsa County, Oklahoma (Tulsa).
—Woodbury County, Iowa (Sioux City).

9805 also following towns in Missouri; St. Louis, Ferguson, Kinloch, Overland, Brentwood, Kirkwood,

Jennings, Wellston, Clayton, Webster Groves, Maplewood, Grayois Station, Old Orchard, and Lake Junction.

See paragraph (10) for minimum quantity required for shipment in pool cars or mixed cars into Mercer County, New Jersey.

(c) $16.00 per M sq. ft. f.o.b. cars delivered to dealers' warehouse or siding in the following markets:

—Buchanan County, Missouri (St. Joseph).
—Cass County, North Dakota (Fargo).
—Greene County, Missouri (Springfield).
—Jasper County, Missouri (Joplin).
—Lancaster County, Nebraska (Lincoln).
—Minnehaha County, South Dakota (Sioux Falls).
—Newton County, Missouri (Joplin).
—Sedgewick County, Kansas (Wichita).

also towns of Kansas City, Dodson and Edgecomb, Missouri, and Rosedale, Waldo, Argentine, Westport, Overland Park and Kansas City, Kansas.

†(d)—For shipment to Meadville, Pennsylvania for the Meadville Housing Operation, the minimum price of 5/16" patented gypsum plasterboard is as stated in telegram dated April 15, 1936.

(8) 3/8" Plasterboard Exceptions:

(a) The minimum price of 3/8" patented gypsum plasterboard, in straight and pool carloads, or in mixed carloads with other gypsum products is $15.00 per M sq. ft. f.o.b. cars delivered to dealers warehouse or siding in (Detroit Area) Wayne County, Michigan; towns of Birmingham, Clawson, Farmington, Ferndale and Royal Oak in Oakland County, Michigan; also towns of Warren, Halfway, Fraser, Roseville and Centerline in Macomb County, Michigan.

(b) The minimum price of 3/8" patented gypsum plasterboard, in straight and pool carloads, or in mixed carloads with other gypsum products is $21.87 per M sq. ft. f.o.b. cars delivered to dealers warehouse or siding in Palm Beach, Dade, Broward and Monroe Counties, Florida.

†(9) In straight carloads of patented gypsum board and/or lath products, (see exceptions below) consigned to one destination and invoiced to one account, deduct $2.00 per M sq. ft. from f.o.b. New Brighton or f.o.b. Philadelphia prices for shipment by rail to dealers warehouse or nearest siding in Metropolitan New York—New Jersey

Areas as follows: Manhattan, Bronx, Kings, Queens, Richmond, Westchester Rockland Nassau and Suffolk Counties, New York; Hudson, Essex, Union, Bergen, Passaic, Morris, Middlesex, Mercer, Somerset, Monmouth, Hunterdon, Warren, Sussex, and Ocean Counties, New Jersey; also in Philadelphia Area as follows: Bucks, Montgomery, Chester, Delaware and Philadelphia Counties, Pennsylvania and Camden County, New Jersey.

9806 Exceptions:

5/16" Plasterboard. The minimum price of 5/16" patented gypsum plasterboard (weight 1175# per M) in straight and pool carloads or in mixed carloads with other gypsum products, for shipment into Mercer County, New Jersey (not to be sold in balance of Metro New York—New Jersey Area) is $14.68 per M sq. ft. f.o.b. cars delivered to dealers warehouse or siding.

1/2" T&G Sheathing. The minimum price of 1/2" patented gypsum sheathing for shipment into Queens and Nassau Counties, New York, also towns of Amityville, Huntington, Northport, Babylon, Lindenhurst, Bayshore and Cold Springs Harbor in Suffolk County, New York, is $19.00 per M sq. ft. for shipment in straight carloads of patented gypsum board products consigned to one destination and invoiced to one account, or $21.00 per M sq. ft. for shipment in pool cars or mixed cars, f.o.b. cars delivered to dealers warehouse or siding.

Where any licensee or any of its employees, salesmen or executive has knowledge or notice, either directly or indirectly, that orders for less than straight car quantities of patented gypsum board products to be shipped into the above defined areas have been pooled for the purpose of or for effect of obtaining the reduced price for straight cars for each participant in the pool, licensor shall regard such sale as made at a price less than the minimum price fixed by the licensor and a violation of the terms of the license agreement.

(10) On pool cars or mixed cars into the Metropolitan New York—New Jersey Area and the Philadelphia Area as described in paragraph (9) above, minimum quantity is 5000 sq. ft. of patented gypsum board and/or lath products consigned to one destination and invoiced to one account. Note: Any mixture of metallized and regular pat-

ented board products (including special surfaced gypsum board products) may be combined to make up the required minimums.

(11) Grand Rapids Switching District. For minimum prices of patented gypsum board products, in straight and pool cars, or in mixed cars with other gypsum products, f.o.b. cars delivered to dealers warehouse or siding within the Grand Rapids, Michigan Switching District, add $1.00 per M sq. ft. to prices applying f.o.b. cars, Grand Rapids Mill.

†(12) Chicago Area. For minimum prices of patented gypsum board products, in straight and pool cars, or in mixed cars with other gypsum products (either 40,000# or 60,000# cars) f.o.b. cars delivered to dealers warehouse or siding within the Chicago Area, add 50¢ per M sq. ft. to prices applying f.o.b. cars, East Chicago mill. This applies into Cook and DuPage Counties, Illinois, Lake County, Indiana and following towns in Lake County, Illinois: Deerfield, Highland Park and Lake Forest. Exception: Minimum price of 1/2" gypsum sheathing, surfaced with a weather resisting paper, for shipment into the Chicago Area as described above is $17.66 per M sq. ft. f.o.b. cars delivered to dealers warehouse or siding.

9807 †(13) Detroit Area. For minimum prices of patented gypsum board products, in straight and pool cars or in mixed cars with other gypsum products, f.o.b. cars delivered to dealers warehouse or siding within the Detroit Area, add 60¢ per M sq. ft. to prices applying f.o.b. cars, Detroit Mill. This applies into Wayne County, Michigan; towns of Birmingham, Clawson, Farmington, Ferndale and Royal Oak in Oakland County, Michigan; and towns of Warren, Halfway, Fraser, Roseville and Centerline in Macomb County, Michigan. Exception: Minimum price of 3/8" gypsum plasterboard is $15.00 per M sq. ft. and minimum price of 1/2" gypsum sheathing (surfaced with a weather resisting paper) is $20.47 per M sq. ft. f.o.b. cars delivered to dealers warehouse or siding within the Detroit Area as described above.

†(14) 24"x48" Cutstock Plasterboard. In States of Kansas, Missouri, Oklahoma, Arkansas, Mississippi and Alabama the minimum price is $17.50 per M sq. ft. for 1/4" and 3/8" thickness and $18.75 per M sq. ft. for 1/2" thickness, f.o.b. Plasterco, Va., Grand Rapids, Mich.,

Fort Dodge, Iowa; East Chicago, Indiana; Gypsum, Ohio; Southard, Oklahoma; Sweetwater, Texas and Acme, Texas.

(15) 1/4" and 3/8" Cutstock Plasterboard. Minimum price for shipment to Niagara, Erie (including the town of Gowanda, New York) Monroe and Wayne Counties, N. Y. is $12.50 per M sq. ft. f.o.b. cars Oakfield, N. Y.

This price does not apply to 32"x48" board.

(16) 32"x48" Gypsum Board. In all areas 32"x48" gypsum board is subject to the minimum wallboard price except:

(a) Where used for specific roof jobs it is subject to the minimum plasterboard price for such specific jobs.

(b) In all states east of the Mississippi River and in the States of Iowa, Minnesota, Missouri, Nebraska, Colorado, Kansas, Oklahoma, Arkansas and Louisiana, 32"x48" board, if grey surfaced and round edged, is subject to minimum plasterboard price.

(17) 36"x48" Gypsum Board. 36"x48" is standard plasterboard size in all states for use on specific gypsum roof jobs only and is subject to minimum plasterboard price for such specific gypsum roof jobs.

(18) For Texas Centennial (Dallas, Texas)

The minimum prices of patented gypsum wallboard, aluminum paint primed, one coat, both sides and four edges, for the Texas Centennial, Dallas, Texas, are as follows:

9808 For Texas Centennial (Dallas, Texas) (Cont'd.).

3/8" Gypsum Wallboard—$43.50 per M sq. ft. f.o.b. Sweetwater, Texas

1/2" Gypsum Wallboard—44.50 per M sq. ft. f.o.b. Sweetwater, Texas

Prices of same boards primed one side only, and four edges, are $4.50 per M sq. ft. less than minimum prices shown above.

(19) Delivered carload minimum prices in certain suburbs same as in city proper, as indicated below:

Delivered Carload Minimum Prices in—	*Same as—*
College Park, Ga.	Atlanta, Ga.
Elkridge, and Glen Burnie, Maryland	Baltimore, Md.
Bristol, Tenn.	Bristol, Va.
Cook and DuPage counties, Ill.; Lake County, Indiana; also following towns in Lake County, Illinois: Deerfield, Highland Park and Lake Forest.	Chicago, Ill.
Cheviot & Bridgetown, O.	Cincinnati, O.
Euclid, North Randall and Bedford, O.	Cleveland, O.
Wayne County; and towns of Birmingham, Clawson, Farmington, Ferndale and Royal Oak, in Oakland county; and Warren, Halfway, Fraser, Roseville, and Centerline in Macomb county, Michigan.	Detroit, Michigan
Dodson and Edgecomb, Mo.; Rosedale, Waldo, Argentine, Westport, Overland Park and Kansas City, Kansas.	Kansas City, Mo.
Kings County, N. Y.	Brooklyn, N. Y.
Ferguson, Kinlock, Overland, Brentwood, Kirkwood, Jennings, Wellston, Clayton, Webster Groves, Maplewood, Gravois Station, Old Orchard and Lake Junction, Mo.	St. Louis, Mo.
Armory, Indian Orchard, Oak Street and Chicopee, Mass.	Springfield, Mass.
South Windham, Maine	Portland, Maine
Gabe, Sheppard and Wilmont, Okla.	Okla. City, Okla.
Arlington Siding (Poughkeepsie), N. Y.	Poughkeepsie, N. Y.

(20) Sales to contractors and prefabricated house manufacturers, also extras on odd sizes:

(a) On sales of standard sizes to contractors, roofing contractors, metal ceiling contractors and prefabricated house manufacturers, add differentials per M sq. ft. as follows: (Note: Sales to roofing contractors are for specific roof jobs only):

9809

To Contractors (Incl. Metal Ceiling Contrs.) & to Prefabricated House Mfrs.		To Roofing Contractors	
Std. Sizes		Std. Sizes	
W. Bd.	Pl. Bd.	W. Bd.	Pl. Bd.
2.50	1.25	1.25	1.25

(b) On sales of odd sizes to dealers, contractors, roofing contractors, metal ceiling contractors and prefabricated house manufacturers, add differentials per M sq. ft. as follows: (Note: Sales to roofing contractors are for specific roof jobs only):

To Dealers Odd Sizes		To Contractors (Incl. Metal Ceiling Contrs.) & to Prefabricated House Mfrs. Odd Sizes		To Roofing Contractors Odd Sizes	
W. Bd.	Pl. Bd.	W. Bd.	Pl. Bd.	W. Bd.	Pl. Bd.
2.50	1.25	5.00	2.50	1.25	1.25

Yours very truly,

UNITED STATES GYPSUM COMPANY,

_____, *Vice President.*

† Indicates change in this reissue.

9810 Stopover, Switching and Other Extra Delivery Charges:

†All stopover charges, switching charges and other extra delivery charges, including full Emergency Increase applicable to such charges, will be paid by customers. Exception: Stopover charges need not be included on shipments into the states of Michigan, Wisconsin, Illinois, Indiana, Ohio, Kansas, Missouri, Arkansas, Oklahoma, Iowa, Minnesota, North Dakota, South Dakota, Texas, Nebraska, Kentucky, Montana, Colorado and Wyoming; also stopover charges need not be included on shipments to destinations within any Gypsum Board Trucking Area wherein the delivered price in pool or mixed carloads is same as delivered price when delivered by truck.

The above prices apply to the sale of all board embodying the claims of our patents in all markets except where an exception is made as hereinafter expressly stated:

(1) Until further notice the above minimum prices shall not apply to sales of patented gypsum wallboard and gypsum plasterboard products for shipment to or delivery in the following area: States of California, Arizona, Nevada, Utah, Idaho, Oregon and Washington, also that portion of State of Montana west of and including Phillips, Petroleum, Musselshell, Yellowstone and Carbon Counties.

(2) In the states of Illinois and Wisconsin, to all destinations where a 60,000 lb. minimum (from Ft. Dodge, East Chicago or Grand Rapids) is in effect, delivered prices of patented board and/or lath, in pool cars, stopover cars, straight cars or mixed cars with other gypsum products, will be mill base price plus 60,000 lb. rate, regardless of minimum shipped. Rate applying to 80,000 lbs. minimum out of Fort Dodge or Grand Rapids into these states will be used in pricing patented board and/or lath in carloads or pool cars consigned to a single destination only, with the exception that shipments to the City of Superior, Wis-

consin may be priced on the 80,000 lb. rate when included in 80,000 lb. stopover cars with shipments for the Twin Cities, Duluth and Steelton, Minnesota.

(3) 1/4" Wallboard Exceptions:

(a) For shipments into states of New Mexico, Colorado and Wyoming, also that portion of Montana east of but not including Phillips, Petroleum, Musselshell, Yellowstone and Carbon Counties, minimum price of 1/4" patented gypsum wallboard is $20.00 per M sq. ft. f.o.b. Acme, Texas; Sweetwater, Texas; Southard, Oklahoma and Fort Dodge, Iowa; or $24.25 per M sq. ft. f.o.b. Laramie, Wyoming and $24.00 per M sq. ft. f.o.b. Loveland, Colorado.

(b) For shipment into states of Oklahoma, Texas, Arkansas, Louisiana, Mississippi, Tennessee, Alabama, Georgia, South Carolina, North Carolina and Florida, minimum price of 1/4" patented gypsum wallboard is $21.00 per M sq. ft. f.o.b. Acme, Texas; Sweetwater, Texas; Southard, Oklahoma; Fort Dodge, Iowa; Grand Rapids, Michigan; East Chicago, Indiana; Gypsum, Ohio; Plasterco, Virginia; and Philadelphia, Pennsylvania.

(4) 3/8" Wallboard Exceptions:

(a) For shipment into states of New Mexico, Colorado, Wyoming, Oklahoma, Texas, Arkansas, Louisiana, Mississippi, Tennessee, Alabama, Georgia, South Carolina, North Carolina and Florida also into that portion of
9811 Montana east of but not including Phillips, Petroleum, Musselshell, Yellowstone and Carbon Counties minimum price of 3/8" patented gypsum wallboard is $25.00 per M sq. ft. f.o.b. Acme, Texas; Sweetwater, Texas; Southard, Oklahoma; Fort Dodge, Iowa; Grand Rapids, Michigan; East Chicago, Indiana; Gypsum, Ohio; Plasterco, Virginia; and Philadelphia, Pennsylvania; or $31.25 per M sq. ft. f.o.b. Laramie, Wyoming and $31.00 per M sq. ft. f.o.b. Loveland, Colorado.

(5) 1/2" Wallboard Exceptions:

(a) For shipment into states of New Mexico, Oklahoma, Texas, and Arkansas, also into Caddo, Bossier, De Soto, Red River, Bienville, Webster and Claiborne Counties, Louisiana, minimum price of 1/2" patented gypsum wallboard is $26.00 per M sq. ft. f.o.b. Acme, Texas; Sweetwater, Texas; Southard, Oklahoma; and Fort Dodge, Iowa.

(b) For shipment into states of Louisiana (except Counties as listed in (a) above), and into Kansas and Nebraska, minimum price of 1/2" patented gypsum wallboard is $29.50 per M sq. ft. f.o.b. Acme, Texas; Sweetwater, Texas; Southard, Oklahoma; and Fort Dodge, Iowa.

(c) For shipment into Cuyahoga County, Ohio, the minimum price of 1/2" patented gypsum wallboard is as stated in supplement to Board License Bulletin No. 1, dated March 6, 1936.

(6) 1/2" T&G Sheathing Exceptions:

(a) For shipment into Cook, Lake, Du Page and McHenry Counties, Illinois, also Lake and Porter Counties, Indiana in straight and pool carloads or in mixed carloads with other gypsum products, the minimum price of 1/2" patented gypsum sheathing is $17.66 per M sq. ft. f.o.b. cars delivered to dealers' warehouse or siding.

(b) For shipment into Allegheny County (Pittsburgh) Pennsylvania in straight and pool carloads or in mixed carloads with other gypsum products, the minimum price of 1/2" patented gypsum sheathing is $21.42 per M sq. ft. f.o.b. cars delivered to dealers' warehouse or siding.

(c) For shipment into Wayne County, Michigan, towns of Birmingham, Clawson, Farmington, Ferndale and Royal Oak in Oakland County, Michigan; also towns of Warren, Halfway, Fraser, Roseville and Centerline in Macomb County, Michigan, in straight and pool carloads or in mixed carloads with other gypsum products, the minimum price of 1/2" patented gypsum sheathing is $20.47 per M sq. ft. f.o.b. cars delivered to dealers' warehouse or siding.

(d) For shipment into Orange, Ulster, Sullivan, Putnam and Dutchess Counties, New York, in straight and pool carloads or in mixed carloads with other gypsum products, the minimum price of 1/2" patented gypsum sheathing is $24.80 per M sq. ft. f.o.b. cars delivered to dealers' warehouse or siding.

(e) For shipment into Queens and Nassau Counties, New York, also towns of Amityville, Huntington, Northport, Babylon, Lindenhurst, Bayshore and Cold
9812 Springs Harbor in Suffolk County, New York, the minimum price of 1/2" patented gypsum sheathing is $19.00 per M sq. ft. for shipment in straight carloads of patented gypsum board products consigned to one

destination and invoiced to one account, or $21.00 per M sq. ft. for shipment in pool cars or mixed cars, f.o.b. cars delivered to dealers' warehouse or siding.

(f) For shipment into Erie and Niagara Counties, New York, the minimum price of 1/2" patented gypsum sheathing is $15.00 per M sq. ft. f.o.b. Oakfield, New York.

†(g) For shipment into states of Oklahoma and Texas, also into Caddo, Bossier, De Soto, Red River, Bienville, Webster and Claiborne Counties, Louisiana, the minimum price of 1/2" patented gypsum sheathing is $26.00 per M sq. ft. f.o.b. Acme, Texas; Sweetwater, Texas; and Southard, Oklahoma.

(h) For shipment into Cuyahoga County, Ohio, the minimum price of 1/2" patented gypsum sheathing is as stated in Supplement to Board License Bulletin No. 1, dated March 6, 1936.

(7) 5/16" Plasterboard. The minimum price of 5/16" patented gypsum plasterboard (weight 1175# per M), in straight and pool carloads, or in mixed carloads with other gypsum products, for shipment into following markets only, is as follows:

(a) $14.68 per M sq. ft. f.o.b. cars delivered to dealers' warehouse or siding in Mercer County, New Jersey (Trenton).

(b) $15.00 per M sq. ft. f.o.b. cars delivered to dealers' warehouse or siding in the following markets:

—Cuyahoga County (Cleveland) and towns of Willoughby and Wickliffe, Ohio.
—Douglas County, Nebraska, (Omaha).
—Hampden County, Massachusetts (Springfield).
—Hanover County, Virginia.
—Hartford County, Connecticut (Hartford).
—Hennepin County, Minnesota (Minneapolis).
—Henrico County, Virginia (Richmond).
—Lancaster County, Pennsylvania (Lancaster).
—Marion County, Indiana (Indianapolis).
—Norfolk County, Virginia (Norfolk).
—Oklahoma County, Oklahoma (Oklahoma City).
—Peoria County, Illinois (Peoria).
—Pottawatomie County, Iowa (Council Bluffs).
—Princess Ann County, Virginia.

—Providence County, Rhode Island (Providence).
—Ramsey County, Minnesota (St. Paul).
—Roanoke County, Virginia (Roanoke).
—Sangamon County, Illinois (Springfield).
—Tulsa County, Oklahoma (Tulsa).
—Woodbury County, Iowa (Sioux City).

9813 UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

JUNE 2, 1936.

Carload Shipments
Board License Bulletin No. 1 (Page 1)—Cancels Page 1
Dated May 4, 1936.

DEAR SIRS: Referring to our license contract with you, you are hereby notified that effective June 4, 1936 the minimum prices at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent); including Haggerty patent number 1,500,452 and Hite patent number 1,230,297, are as follows:

Patented gypsum wallboard and plasterboard products shall be quoted and sold on a delivered basis, f.o.b. cars destination. Delivered price is lowest combination of mill price plus freight, including emergency freight charge (see page 2) from that mill to destination (See Note # page 2). In stopover cars delivered price for any part of car is carload delivered price as above defined to point of delivery of that part of car. In every case rates as shown in published railroad freight tariffs apply. To determine board footage required to meet straight or mixed carload minimum weights, as shown in published railroad freight tariffs, use weights per M sq. ft. as shown below:

Dealer Prices f.o.b. cars: (Applying for standard sizes as listed in Bulletin No. 4)	1/4" Gypsum Wallboard (Wt. 950# per M)	5/16" Gypsum Wallboard (Wt. 1175 per M). See Note *	3/8" Gypsum Wallboard (Wt. 1400# per M)	1/2" Gypsum Wallboard (Wt. 1900# per M)	1/2" Gypsum Sheathing (Wt. 1900# per M)	3/4" Gypsum Wallboard (Wt. 3300# per M)	3/8" Tiled Gypsum Wallboard (Wt. 1400# per M)	1/4" Gypsum Plasterboard (Wt. 950# per M)	3/8" Gypsum Plasterboard (Wt. 1400# per M)	1/2" Gypsum Plasterboard (Wt. 1900# per M)	3/4" Gypsum Plasterboard (Wt. 3300# per M)
Acme, Texas	22.50	— —	28.50	31.00	22.00	— —	50.00	15.00	15.00	16.25	— —
Boston (Charlestown) Mass.	22.50	— —	28.50	31.00	22.00	— —	50.00	15.00	15.00	16.25	— —
Detroit, Mich.	22.50	— —	28.50	31.00	22.00	— —	50.00	15.00	15.00	16.25	— —
East Chicago, Ind.	22.50	— —	28.50	31.00	22.00	— —	50.00	15.00	15.00	16.25	— —
Fort Dodge, Iowa	22.50	— —	28.50	31.00	22.00	36.50	50.00	15.00	15.00	16.25	20.00
Grand Rapids, Mich.	22.50	— —	28.50	31.00	22.00	— —	50.00	15.00	15.00	16.25	— —
Gypsum, Ohio	22.50	26.50	28.50	31.00	22.00	36.50	50.00	15.00	15.00	16.25	20.00
Laramie, Wyo.	26.75	— —	34.75	— —	— —	— —	56.25	— —	21.25	— —	— —
Loveland, Colo.	26.50	— —	34.50	39.00	— —	— —	56.00	— —	21.00	— —	— —
New Brighton, S. I., N. Y.	22.50	— —	28.50	31.00	22.00	— —	50.00	15.00	15.00	16.25	— —
Oakfield, N. Y.	22.50	26.50	28.50	31.00	22.00	36.50	50.00	15.00	15.00	16.25	20.00
Philadelphia, Pa.	22.50	— —	28.50	31.00	22.00	— —	50.00	15.00	15.00	16.25	— —
Plastereo, Va.	22.50	— —	28.50	31.00	22.00	— —	50.00	15.00	15.00	16.25	— —
Southard, Okla.	22.50	— —	28.50	31.00	22.00	36.50	50.00	15.00	15.00	16.25	20.00
Sweetwater, Texas	22.50	— —	28.50	31.00	22.00	— —	50.00	15.00	15.00	16.25	— —

* 5/16" Gypsum Wallboard is for sale to manufacturers only, for fabrication at their factories—not a dealer item.

9814 #Where an odd 'rate per ton' is in effect (example: $3.45 per ton) the freight per M sq. ft. shall be figured on basis of rate per cwt. nearest to rate per ton, fractions of less than ¼¢ per cwt. to be dropped, fractions of ¼¢ per cwt. to ½¢ per cwt. to be considered as ½¢. Example: The rate of $3.45 per ton equals 17¼¢ per cwt. For purpose of arriving at delivered price, however, the rate of 17½¢ shall be used.

Emergency Freight Charges:

The minimum delivered prices of patented gypsum wallboard and gypsum plasterboard are directly affected by the permissive order of the Interstate Commerce Commission authorizing an increase in freight rates. On Interstate traffic the freight increase becomes effective on the effective date of the Interstate tariff, and in Intrastate traffic the freight increase is effective when approved by the State Commission.

When emergency freight charges become effective the minimum delivered price of patented gypsum wallboard and gypsum plasterboard is to be the lowest combination of mill price plus freight, including emergency charge, from that mill to destination, as follows:

Where the minimum delivered price is the result of mill price plus Interstate freight, the increase is to be added on the effective date of the Interstate tariff.

Where the minimum delivered price is the result of mill price plus Intrastate freight, the increase is effective when approved by the State Commission.

The amount of increase in freight to be added to minimum f.o.b. mill prices of patented gypsum wallboard and gypsum plasterboard shall be as detailed in following schedule:

Opposite old rate, using the table below, is the proper new pricing rate, including emergency freight charge, in cents per 100 pounds:

Old rate	New rate	Old rate	New rate	Old rate	New rate
.05	.05	.18	.19	.31	.33
.055	.06	.185	.20	.315	.34
.06	.06	.19	.20	.32	.34
.065	.07	.195	.21	.325	.35
.07	.07	.20	.21	.33	.35
.075	.08	.205	.22	.335	.36
.08	.09	.21	.22	.34	.36
.085	.09	.215	.23	.345	.37
.09	.10	.22	.24	.35	.37
.095	.10	.225	.24	.355	.38
.10	.11	.23	.25	.36	.39
.105	.11	.235	.25	.365	.39
.11	.12	.24	.26	.37	.40
.115	.12	.245	.26	.375	.40
.12	.13	.25	.27	.38	.41
.125	.13	.255	.27	.385	.41
.13	.14	.26	.28	.39	.42
.135	.14	.265	.28	.395	.42
.14	.15	.27	.29	.40	.43
.145	.16	.275	.29	.405	.43
.15	.16	.28	.30	.41	.44
.155	.17	.285	.30	.415	.44
.16	.17	.29	.31	.42	.45
.165	.18	.295	.32	.425	.45
.17	.18	.30	.32	.43	.46
.175	.19	.305	.33		

On all old rates over 43¢ per cwt. to secure new rate add flat 3¢ per cwt. (.435 becomes .465, .44 becomes .47, etc.)

9815 Stopover, Switching and Other Extra Delivery Charges:

All stopover charges, switching charges and other extra delivery charges, including full emergency Increase applicable to such charges, will be paid by customers.

Exception: Stopover charges need not be included on shipments into the states of Michigan, Wisconsin, Illinois, Indiana, Ohio, Kansas, Missouri, Arkansas, Oklahoma, Iowa, Minnesota, North Dakota, South Dakota, Texas, Nebraska, Kentucky, Montana, Colorado and Wyoming; also stopover charges need not be included on shipments to destinations within any Gypsum Board Trucking Area wherein the delivered price in pool or mixed carloads is same as delivered priee when delivered by truck.

The above prices apply to the sale of all board embodying the claims of our patents in all markets except where an exception is made as hereinafter expressly stated:

(1) Until further notice the above minimum prices shall not apply to sales of patented gypsum wallboard and gypsum plasterboard products for shipment to or delivery in the following area: States of California, Ari-

zona, Nevada, Utah, Idaho, Oregon and Washington, also that portion of State of Montana west of and including Phillips, Petroleum, Musselshell, Yellowstone and Carbon Counties.

(2) In the states of Illinois and Wisconsin, to all destinations where a 60,000 lb. minimum (from Ft. Dodge, East Chicago or Grand Rapids) is in effect, delivered prices of patented board and/or lath, in pool cars, stopover cars, straight cars or mixed cars with other gypsum products, will be mill base price plus 60,000 lb. rate, regardless of minimum shipped. Rate applying to 80,000 lbs. minimum out of Fort Dodge or Grand Rapids into these states will be used in pricing patented board and/or lath in carloads or pool cars consigned to a single destination only, with the exception that shipments to the City of Superior, Wisconsin may be priced on the 80,000 lb. rate when included in 80,000 lb. stopover cars with shipments for the Twin Cities, Duluth and Steelton, Minnesota.

(3) 1/4" Wallboard Exceptions:

(a) For shipment into states of New Mexico, Colorado and Wyoming, also that portion of Montana east of but not including Phillips, Petroleum, Musselshell, Yellowstone and Carbon Counties, minimum price of 1/4" patented gypsum wallboard is $20.00 per M sq. ft. f.o.b. Acme, Texas; Sweetwater, Texas; Southard, Oklahoma and Fort Dodge, Iowa; or $24.25 per M sq. ft. f.o.b. Laramie, Wyoming and $24.00 per M sq. ft. f.o.b. Loveland, Colorado.

(b) For shipment into states of Oklahoma, Texas, Arkansas, Louisiana, Mississippi, Tennessee, Alabama, Georgia, South Carolina, North Carolina and Florida, minimum price of 1/4" patented gypsum wallboard is $21.00 per M sq. ft. f.o.b. Acme, Texas: Sweetwater, Texas; Southard, Oklahoma; Fort Dodge, Iowa; Grand Rapids, Michigan; East Chicago, Indiana; Gypsum, Ohio; Plasterco, Virginia; and Philadelphia, Pennsylvania.

†(c) For shipment into states of North Dakota, South Dakota, Nebraska and Kansas, minimum price of 1/4" patented gypsum wallboard is $22.00 per M sq. ft. f.o.b. Fort Dodge, Iowa and Southard, Oklahoma.

†(d) For shipment into state of Minnesota, minimum price of 1/4" patented gypsum wallboard is $22.00 per

M sq. ft. f.o.b. Fort Dodge, Iowa or $22.50 per M sq. ft. f.o.b. Grand Rapids, Michigan and East Chicago, Indiana.

9816 (4) 3/8" Wallboard Exceptions:

(a) For shipment into states of New Mexico, Colorado, Wyoming, Oklahoma, Texas, Arkansas, Louisiana, Mississippi, Tennessee, Alabama, Georgia, South Carolina, North Carolina and Florida also into that portion of Montana east of but not including Phillips, Petroleum, Musselshell, Yellowstone and Carbon Counties minimum price of 3/8" patented gypsum wallboard is $25.00 per M sq. ft. f.o.b. Acme, Texas; Sweetwater, Texas; Southard, Oklahoma; Fort Dodge, Iowa; Grand Rapids, Michigan; East Chicago, Indiana; Gypsum, Ohio; Plasterco, Virginia; and Philadelphia, Pennsylvania; or $31.25 per M sq. ft. f.o.b. Laramie, Wyoming and $31.00 per M sq. ft. f.o.b. Loveland, Colorado.

(b) For shipment into states of North Dakota, South Dakota, Nebraska and Kansas, minimum price of 3/8" patented gypsum wallboard is $26.00 per M sq. ft. f.o.b. Fort Dodge, Iowa and Southard, Oklahoma.

(c) For shipment into states of Minnesota and Missouri, minimum price of 3/8" patented gypsum wallboard is $26.00 per M sq. ft. f.o.b. Fort Dodge, Iowa and Southard, Oklahoma; or $28.50 per M sq. ft. f.o.b. East Chicago, Indiana and Grand Rapids, Michigan.

(5) 1/2" Wallboard Exceptions:

(a) For shipment into states of New Mexico, Oklahoma, Texas and Arkansas, also into Caddo, Bossier, De Soto, Red River, Bienville, Webster and Claiborne Counties, Louisiana, minimum price of 1/2" patented gypsum wallboard is $26.00 per M sq. ft. f.o.b. Acme, Texas; Sweetwater, Texas; Southard, Oklahoma; and Fort Dodge, Iowa.

(b) For shipment into states of North Carolina, South Carolina, Georgia, Florida, Tennessee, Alabama, Mjssissippi, Louisiana (except counties listed in (a) above), Kansas, Nebraska, South Dakota, North Dakota and that portion of Montana east of but not including Phillips, Petroleum, Musselshell, Yellowstone and Carbon Counties, minimum price of 1/2" patented gypsum wallboard is $29.00 per M sq. ft. f.o.b. Plasterco, Virginia; Philadelphia, Pennsylvania; Gypsum, Ohio; East Chicago, Indiana;

Grand Rapids, Michigan; Fort Dodge, Iowa; Southard, Oklahoma; Sweetwater, Texas, and Acme, Texas.

(c) For shipment into states of Minnesota and Missouri, minimum price of 1/2" patented gypsum wallboard is $29.00 per M sq. ft. f.o.b. Fort Dodge, Iowa and Southard, Oklahoma; or $31.00 per M sq. ft. f.o.b. East Chicago, Indiana and Grand Rapids, Michigan.

(d) For shipment into Cuyahoga County, Ohio, the minimum price of 1/2" patented gypsum wallboard is as stated in supplement to Board License Bulletin No. 1, dated March 6, 1936.

(6) 1/2" T&G Sheathing Exceptions:

(a) For shipment into Cook, Lake, Du Page and McHenry Counties, Illinois, also Lake and Porter Counties, Indiana in straight and pool carloads or in mixed carloads with other gypsum products, the minimum price of 1/2" patented gypsum sheathing is $17.66 per M sq. ft. f.o.b. cars delivered to dealers' warehouse or siding.

9817 (b) For shipment into Allegheny County (Pittsburgh) Pennsylvania in straight and pool carloads or in mixed carloads with other gypsum products, the minimum price of 1/2" patented gypsum sheathing is $21.42 per M sq. ft. f.o.b. cars delivered to dealers' warehouse or siding.

(c) For shipment into Wayne County, Michigan, towns of Birmingham, Clawson, Farmington, Ferndale and Royal Oak in Oakland County, Michigan; also towns of Warren, Halfway, Fraser, Roseville and Centerline in Macomb County, Michigan, in straight and pool carloads or in mixed carloads with other gypsum products, the minimum price of 1/2" patented gypsum sheathing is $20.47 per M sq. ft. f.o.b. cars delivered to dealers' warehouse or siding.

(d) For shipment into Orange, Ulster, Sullivan, Putnam and Dutchess Counties, New York, in straight and pool carloads or in mixed carloads with other gypsum products, the minimum price of 1/2" patented gypsum sheathing is $24.80 per M sq. ft. f.o.b. cars delivered to dealers' warehouse or siding.

(e) For shipment into Queens and Nassau Counties, New York also towns of Amityville, Huntington, North-

port, Babylon, Lindenhurst, Bayshore and Cold Springs Harbor in Suffolk County, New York, the minimum price of 1/2" patented gypsum sheathing is $19.00 per M sq. ft. for shipment in straight carloads of patented gypsum board products consigned to one destination and invoiced to one account, or $21.00 per M sq. ft. for shipment in pool cars or mixed cars, f.o.b. cars delivered to dealers' warehouse or siding.

(f) For shipment into Erie and Niagara counties, New York, the minimum price of 1/2" patented gypsum sheathing is $15.00 per M sq. ft. f.o.b. Oakfield, New York.

(g) For shipment into states of Oklahoma and Texas, also into Caddo, Bossier, De Soto, Red River, Bienville, Webster and Claiborne Counties, Louisiana, the minimum price of 1/2" patented gypsum sheathing is $26.00 per M sq. ft. f.o.b. Acme, Texas; Sweetwater, Texas; and Southard, Oklahoma.

(h) For shipment into Cuyahoga County, Ohio, the minimum price of 1/2" patented gypsum sheathing is as stated in Supplement to Board License Bulletin No. 1, dated March 6, 1936.

(7) 5/16" Plasterboard. The minimum price of 5/16" patented gypsum plasterboard (weight 1175# per M), in straight and pool carloads, or in mixed carloads with other gypsum products, for shipment into following markets only, is as follows:

(a) $14.68 per M sq. ft. f.o.b. cars delivered to dealers' warehouse or siding in Mercer County, New Jersey (Trenton). See paragraph (10) for minimum quantity required for shipment in pool cars or mixed cars into Mercer County, New Jersey.

9818 (7) 5/16" Plasterboard (Cont'd.)

(b) $15.00 per M sq. ft. f.o.b. cars delivered to dealers' warehouse or siding in the following markets:

—Cuyahoga County (Cleveland) and towns of Willoughby and Wickliffe, Ohio.
—Douglas County, Nebraska, (Omaha).
—Franklin County, Ohio (Columbus).
—Hampden County, Massachusetts (Springfield).
—Hanover County, Virginia.
—Hartford County, Connecticut (Hartford).

—Hennepin County, Minnesota (Minneapolis).
—Henrico County, Virginia (Richmond).
—Kent County, Rhode Island.
—Lancaster County, Pennsylvania (Lancaster).
—Marion County, Indiana (Indianapolis).
—Norfolk County, Virginia (Norfolk).
—Oklahoma County, Oklahoma (Oklahoma City).
—Peoria County, Illinois (Peoria).
—Pottawatomie County, Iowa (Council Bluffs).
—Princess Anne County, Virginia.
—Providence County, Rhode Island (Providence).
—Ramsey County, Minnesota (St. Paul).
—Roanoke County, Virginia (Roanoke).
—Sangamon County, Illinois (Springfield).
—Tulsa County, Oklahoma (Tulsa).
—Woodbury County, Iowa (Sioux City).

also following towns in Missouri; St. Louis, Ferguson, Kinloch, Overland, Brentwood, Kirkwood, Jennings, Wellston, Clayton, Webster Groves, Maplewood, Gravois Station, Old Orchard, and Lake Junction.

(c) $16.00 per M sq. ft. f.o.b. cars delivered to dealers' warehouse or siding in the following markets:

—Buchanan County, Missouri (St. Joseph).
—Cass County, North Dakota (Fargo).
—DeKalb County, Georgia.
—Fulton County, Georgia (Atlanta).
—Greene County, Missouri (Springfield).
—Jasper County, Missouri (Joplin).
—Lancaster County, Nebraska (Lincoln).
—Minnehaha County, South Dakota (Sioux Falls).
—Newton County, Missouri (Joplin).
—Sedgewick County, Kansas (Wichita).

also towns of Kansas City, Dodson and Edgecomb, Missouri, and Rosedale, Waldo Argentine, Westport, Overland Park and Kansas City, Kansas.

(d) For shipment to Meadville, Pennsylvania for the Meadville Housing Operation, the minimum price of 5/16" patented gypsum plasterboard is as stated in telegram dated April 15, 1936.

9819 (8) 3/8" Plasterboard Exceptions:

(a) The minimum price of 3/8" patented gypsum plasterboard, in straight and pool carloads, or in mixed carloads with other gypsum products is $15.00 per M sq.

ft. f. o. b. cars delivered to dealers warehouse or siding in (Detroit Area) Wayne County, Michigan; towns of Birmingham, Clawson, Farmington, Ferndale and Royal Oak in Oakland County, Michigan; also towns of Warren, Halfway, Fraser, Roseville and Centerline in Macomb County, Michigan.

(b) The minimum price of 3/8" patented gypsum plasterboard, in straight and pool carloads, or in mixed carloads with other gypsum products is $21.87 per M sq. ft. f. o. b. cars delivered to dealers warehouse or siding in Palm Beach, Dade, Broward and Monroe Counties, Florida.

(9) In straight carloads of patented gypsum board and/or lath products consigned to one destination and invoiced to one account, minimum prices of patented gypsum board products f. o. b. cars delivered to dealers warehouse or siding within the Metro New York-New Jersey, Philadelphia and Boston areas (as described below) shall be same as f. o. b. New Brighton, Philadelphia or Boston mill prices as listed on page one of this bulletin. This applies into areas as follows:

Metro New York-New Jersey Area: Manhattan, Bronx, Kings, Queens, Richmond, Westchester, Rockland, Nassau and Suffolk Counties, N. Y., also Hudson, Essex, Union, Bergen, Passaic, Morris, Middlesex, Mercer, Somerset, Monmouth, Hunterdon, Warren, Sussex and Ocean Counties, New Jersey. Exception: Refer to section (e) of paragraph (6) and section (a) of paragraph (7) for minimum prices of 1/2" T&G sheathing into Queens and Nassau Counties and several towns in Suffolk County, New York, also of 5/16" plasterboard into Mercer County, New Jersey.

Philadelphia Area: Bucks, Montgomery, Chester, Delaware and Philadelphia Counties, Pennsylvania and Camden County, New Jersey.

Boston Area: Essex, Middlesex, Suffolk and Norfolk counties, Mass., the town of Mansfield, Mass., that portion of Plymouth County lying north of the continuation of the southern boundary of Norfolk County, Mass.; Rockingham and Strafford Counties, New Hampshire; York and Cumberland Counties, Maine.

Where any licensee or any of its employees, salesmen or executives has knowledge or notice, either directly or indirectly, that orders for less than straight car quantities of patented gypsum board products to be shipped into the above defined areas have been pooled for the purpose of or

for effect of obtaining the reduced price for straight cars for each participant in the pool, licensor shall regard such sale as made at a price less than the minimum price fixed by the licensor and a violation of the terms of the license agreement.

9820 (10) For minimum prices of patented gypsum board products, in pool cars or in mixed cars with other gypsum products, f. o. b. cars delivered to dealers warehouse or siding within the Metro New York-New Jersey, Philadelphia and Boston Areas as described in paragraph (9) above, add $2.00 per M sq. ft. to prices applying f. o. b. cars New Brighton, Philadelphia to Boston Mills. Exceptions: Refer to section (e) of paragraph (6) and section (a) of paragraph (7) for minimum prices of 1/2" T&G Sheathing into Queens and Nassau Counties and several towns in Suffolk County, New York, also of 5/16" plasterboard into Mercer County, New Jersey.

On pool cars or mixed cars into the Metro New York-New Jersey Area, the Philadelphia Area and the Boston Area as described in paragraph (9) above, minimum quantity is 5000 sq. ft. of patented gypsum board and/or lath products consigned to one destination and invoiced to one account. Note: Any mixture of metallized and regular patented board products (including special surfaced gypsum board products) may be combined to make up the required minimums.

(11) Grand Rapids Switching District. For minimum prices of patented gypsum board products, in straight and pool cars, or in mixed cars with other gypsum products, f. o. b. cars delivered to dealers warehouse or siding within the Grand Rapids, Michigan Switching District, add $1.00 per M sq. ft. to prices applying f.o.b. cars, Grand Rapids Mill.

(12) Chicago Area. For minimum prices of patented gypsum board products, in straight and pool cars, or in mixed cars with other gypsum products (either 40,000# or 60,000# cars) f.o.b. cars delivered to dealers warehouse or siding within the Chicago Area, add 50¢ per M sq. ft. to prices applying f.o.b. cars, East Chicago mill. This applies into Cook and DuPage Counties, Illinois, Lake County, Indiana and following towns in Lake County, Illinois: Deerfield, Highland Park and Lake Forest. Exception: Minimum price of 1/2" gypsum sheathing for shipment into the Chicago Area as described above is $17.66 per M sq. ft. f.o.b. cars delivered to dealers warehouse or siding.

(13) Detroit Area. For minimum prices of patented gypsum board products, in straight and pool cars or in mixed cars with other gypsum products, f.o.b. cars delivered to dealers warehouse or siding within the Detroit Area, add 60¢ per M sq. ft. to prices applying f.o.b. cars, Detroit Mill. This applies into Wayne County, Michigan; towns of Birmingham, Clawson, Farmington, Ferndale and Royal Oak in Oakland County, Michigan; and towns of Warren, Halfway, Fraser, Roseville and Centerline in Macomb County, Michigan. Exception: Minimum price of 3/8" gypsum plasterboard is $15.00 per M sq. ft. and minimum price of 1/2" gypsum sheathing is $20.47 per M sq. ft. f.o.b. cars delivered to dealers warehouse or siding within the Detroit Area as described above.

(14) 24" x 48" Cutstock Plasterboard. In states of Kansas, Missouri, Oklahoma, Arkansas, Mississippi and Alabama the minimum price is $17.50 per M sq. ft. for 1/4" and 3/8" thicknesses and $18.75 per M sq. ft. for 1/2" thickness, f.o.b. Plasterco, Va., Grand Rapids, Mich., Fort Dodge, Iowa; East Chicago, Indiana; Gypsum, Ohio; Southard, Oklahoma; Sweetwater, Texas and Acme, Texas.

(15) 1/4" and 3/8" Cutstock Plasterboard. Minimum price for shipment to Niagara, Erie (including the town of Gowanda, New York) Monroe and Wayne Counties, N. Y. is $12.50 per M sq. ft. f.o.b. cars Oakfield, N. Y.

This price does not apply to 32" x 48" board.

9821 (16) 32" x 48" Gypsum Board. In all areas 32" x 48" gypsum board is subject to the minimum wallboard price except:

(a) Where used for specific roof jobs it is subject to the minimum plasterboard price for such specific jobs.

(b) In all states east of the Mississippi River and in the states of Iowa, Minnesota, Missouri, Nebraska, Colorado, Kansas, Oklahoma, Arkansas and Louisiana, 32" x 48" board, if grey surfaced and round edged, is subject to minimum plasterboard price.

(c) In Henrico County, Virginia only, 32" x 48" cutstock plasterboard is subject to minimum plasterboard price.

(17) 36" x 48" Gypsum Board. 36" x 48" is standard plasterboard size in all states for use on specific gypsum

roof jobs only and is subject to minimum plasterboard price for such specific gypsum roof jobs.

(18) For Texas Centennial (Dallas, Texas).

The minimum prices of patented gypsum wallboard, aluminum paint primed, one coat, both sides and four edges, for the Texas Centennial, Dallas, Texas, are as follows:

3/8" Gypsum Wallboard—$43.50 per M sq. ft. f.o.b. Sweetwater, Texas.

1/2" Gypsum Wallboard—44.50 per M sq. ft. f.o.b. Sweetwater, Texas.

Prices of same boards primed one side only, and four edges, are $4.50 per M sq. ft. less than minimum prices shown above.

(19) Delivered Carload Minimum Prices in Certain Suburbs Same as in City Proper, as Indicated Below:

Delivered Carload Minimum Prices in—	*Same as—*
College Park, Ga.	Atlanta, Ga.
Elkridge, and Glen Burnie, Maryland	Baltimore, Md.
Bristol, Tenn.	Bristol, Va.
Cook and DuPage counties, Ill., Lake County, Indiana; also following towns in Lake County, Illinois; Deerfield, Highland Park and Lake Forest.	Chicago, Ill.
Cheviot & Bridgetown, O.	Cincinnati, O.
Euclid, North Randall and Bedford, O.	Cleveland, O.
Wayne County; and towns of Birmingham, Clawson, Farmington, Ferndale and Royal Oak, in Oakland County; and Warren, Halfway, Fraser, Roseville, and Centerline in Macomb county, Michigan.	Detroit, Michigan
Dodson and Edgecomb, Mo.; Rosedale, Waldo, Argentine, Westport, Overland Park and Kansas City, Kansas.	Kansas City, Mo.
Kings County, N. Y.	Brooklyn, N. Y.
9822 Ferguson, Kinlock, Overland, Brentwood, Kirkwood, Jennings, Wellston, Clayton, Webster Groves, Maplewood, Gravois Station, Old Orchard and Lake Junction, Mo.	St. Louis, Mo.
Armory, Indian Orchard, Oak Street and Chicopee, Mass.	Springfield, Mass.
South Windham, Maine	Portland, Maine
Gabe, Sheppard and Wilmont, Okla.	Okla. City, Okla.
Arlington Siding (Poughkeepsie), N. Y.	Poughkeepsie, N. Y.
Rosslyn, Virginia	Washington, D. C.

(20) Sales to Contractors and Prefabricated House Manufacturers, Also Extras on Odd Sizes:

(a) On sales of standard sizes to contractors, roofing contractors, metal ceiling contractors and prefabricated house manufacturers, add differentials per M sq. ft. as follows. (Note: Sales to roofing contractors are for specific roof jobs only):

To Contractors (Incl. Metal Ceiling Contrs.) & to Prefabricated House Mfrs. Std. Sizes		To Roofing Contractors Std. Sizes	
W. Bd.	Pl. Bd.	W. Bd.	Pl. Bd.
2.50	1.25	1.25	1.25

(b) On sales of odd sizes to dealers, contractors, roofing contractors, metal ceiling contractors and prefabricated house manufacturers, add differentials per M sq. ft. as follows. (Note: Sales to roofing contractors are for specific roof jobs only):

To Dealers Odd Sizes		To Contractors (Incl. Metal Ceiling Contrs.) & to Prefabricated House Mfrs. Odd Sizes		To Roofing Contractors Odd Sizes	
W. Bd.	Pl. Bd.	W. Bd.	Pl. Bd.	W. Bd.	Pl Bd.
2.50	1.25	5.00	2.50	1.25	1.25

Yours very truly,

UNITED STATES GYPSUM COMPANY

———— ————, *Vice President.*

† Indicates change in this reissue.

9823 Stopover, Switching and Other Extra Delivery Charges:

All stopover charges, switching charges and other extra delivery charges, including full Emergency Increase applicable to such charges, will be paid by customers. Exception: Stopover charges need not be included on shipments into the states of Michigan, Wisconsin, Illinois, Indiana, Ohio, Kansas, Missouri, Arkansas, Oklahoma, Iowa, Minnesota, North Dakota, South Dakota, Texas, Nebraska, Kentucky, Montana, Colorado and Wyoming; also stopover charges need not be included on shipments to destinations within any Gypsum Board Trucking Area wherein the delivered price in pool or mixed carloads is same as delivered price when delivered by truck.

The above prices apply to the sale of all board embodying the claims of our patents in all markets except where an exception is made as hereinafter expressly stated:

(1) Until further notice the above minimum prices shall not apply to sales of patented gypsum wallboard and gypsum plasterboard products for shipment to or delivery in the following area: States of California, Arizona, Nevada, Utah, Idaho, Oregon and Washington, also that portion of State of Montana west of and including Phillips, Petroleum, Musselshell, Yellowstone and Carbon Counties.

(2) In the states of Illinois and Wisconsin, to all destinations where a 60,000 lb. minimum (from Ft. Dodge, East Chicago or Grand Rapids) is in effect, delivered prices of patented board and/or lath, in pool cars, stopover cars, straight cars or mixed cars with other gypsum products, will be mill base price plus 60,000 lb. rate, regardless of minimum shipped. Rate applying to 80,000 lbs. minimum out of Fort Dodge or Grand Rapids into these states will be used in pricing patented board and/or lath in carloads or pool cars consigned to a single destination only, with the exception that shipments to the City of Superior, Wisconsin may be priced on the 80,000 lb. rate when included in 80,000 lb. stopover cars with shipments for the Twin Cities, Duluth and Steelton, Minnesota.

(3) 1/4" Wallboard Exceptions:

†(a) For shipment into states of Florida, New Mexico, Colorado and Wyoming, also that portion of Montana east of but not including Phillips, Petroleum, Musselshell, Yellowstone and Carbon Counties, minimum price of 1/4" patented gypsum wallboard is $20.00 per M sq. ft. f.o.b. Acme, Texas; Sweetwater, Texas; Southard, Oklahoma; Plasterco, Virginia; and Fort Dodge, Iowa; or $24.25 per M sq. ft. f.o.b. Laramie, Wyoming and $24.00 per M sq. ft. f.o.b. Loveland, Colorado.

†(b) For shipment into states of Oklahoma, Texas, Arkansas, Louisiana, Mississippi, Tennessee, Alabama, Georgia, South Carolina and North Carolina, minimum price of 1/4" patented gypsum wallboard is $21.00 per M sq. ft. f.o.b. Acme, Texas; Sweetwater, Texas; Southard, Oklahoma; Fort Dodge, Iowa; Grand Rapids, Michigan;

† Indicates changes in this reissue (changes become effective June 23, 1936).

East Chicago, Indiana; Gypsum, Ohio; Plasterco, Virginia and Philadelphia, Pennsylvania.

(c) For shipment into states of North Dakota, South Dakota, Nebraska and Kansas, minimum price of 1/4" patented gypsum wallboard is $22.00 per M sq. ft. f.o.b. Fort Dodge, Iowa and Southard, Oklahoma.

(d) For shipment into state of Minnesota, minimum price of 1/4" patented gypsum wallboard is $22.00 per M sq. ft. f.o.b. Fort Dodge, Iowa or $22.50 per M sq. ft. f.o.b. Grand Rapids, Michigan and East Chicago, Indiana.

(4) 3/8" Wallboard Exceptions:

(a) For shipment into states of New Mexico, Colorado, Wyoming, Oklahoma, Texas, Arkansas, Louisiana, Mississippi, Tennessee, Alabama, Georgia, South Carolina, North Carolina and Florida, also into that portion of Mon-
9824 tana east of but not including, Phillips, Petroleum, Musselshell, Yellowstone and Carbon Counties minimum price of 3/8" patented gypsum wallboard is $25.00 per M sq. ft. f.o.b. Acme, Texas; Sweetwater, Texas; Southard, Oklahoma; Fort Dodge, Iowa; Grand Rapids, Michigan; East Chicago, Indiana; Gypsum, Ohio; Plasterco, Virginia; and Philadelphia, Pennsylvania; or $31.25 per M sq. ft. f.o.b. Laramie, Wyoming and $31.00 per M sq. ft. f.o.b. Loveland, Colorado.

(b) For shipment into states of North Dakota, South Dakota, Nebraska and Kansas, minimum price of 3/8" patented gypsum wallboard is $26.00 per M sq. ft. f.o.b. Fort Dodge, Iowa and Southard, Oklahoma.

(c) For shipment into states of Minnesota and Missouri, minimum price of 3/8" patented gypsum wallboard is $26.00 per M sq. ft. f.o.b. Fort Dodge, Iowa and Southard, Oklahoma; or $28.50 per M sq. ft. f.o.b. East Chicago, Indiana and Grand Rapids, Michigan.

(d) For shipment into states of Maine, New Hampshire, Vermont, Wisconsin and Upper Michigan, also into Kentucky (not including Boone, Kenton and Campbell counties), also into West Virginia (not including Hancock, Brooke, Ohio and Marshall Counties), also for shipment into town of Bluefield only in state of Virginia, minimum price of 3/8" patented gypsum wallboard is $27.00 per M sq. ft. f.o.b. Oakfield, New York; Boston, Massachusetts;

Plasterco, Virginia; Gypsum, Ohio; East Chicago, Indiana; Grand Rapids, Michigan; and Fort Dodge, Iowa.

(5) 1/2" Wallboard Exceptions:

(a) For shipment into states of New Mexico, Oklahoma, Texas and Arkansas, also into Caddo, Bossier, De Soto, Red River, Bienville, Webster and Claiborne Counties, Louisiana, minimum price of 1/2" patented gypsum wallboard is $26.00 per M sq. ft. f.o.b. Acme, Texas; Sweetwater, Texas; Southard, Oklahoma; and Fort Dodge, Iowa.

(b) For shipment into states of North Carolina, South Carolina, Georgia, Florida, Tennessee, Alabama, Mississippi, Louisiana (except counties listed in (a) above), Kansas, Nebraska, South Dakota, North Dakota and that portion of Montana east of but not including Phillips, Petroleum, Musselshell, Yellowstone and Carbon Counties, minimum price of 1/2" patented gypsum wallboard is $29.00 per M sq. ft. f.o.b. Plasterco, Virginia; Philadelphia, Pennsylvania; Gypsum, Ohio; East Chicago, Indiana; Grand Rapids, Michigan; Fort Dodge, Iowa; Southard, Oklahoma; Sweetwater, Texas and Acme, Texas.

(c) For shipment into states of Minnesota and Missouri, minimum price of 1/2" patented gypsum wallboard is $29.00 per M sq. ft. f.o.b. Fort Dodge, Iowa and Southard, Oklahoma; or $31.00 per M sq. ft. f.o.b. East Chicago, Indiana and Grand Rapids, Michigan.

(d) For shipment into Cuyahoga County, Ohio, the minimum price of 1/2" patented gypsum wallboard is as stated in supplement to Board License Bulletin No. 1, dated March 6, 1936.

(6) 1/2" T&G Sheathing Exceptions:

(a) For shipment into Cook, Lake, Du Page and McHenry Counties, Illinois, also Lake and Porter Counties, Indiana in straight and pool carloads or in mixed carloads with other gypsum products, the minimum price of 1/2" patented gypsum sheathing is $17.66 per M sq. ft. f.o.b. cars delivered to dealers' warehouse or siding.

9825 (7) 5/16" Plasterboard (Cont'd.).

(b) $15.00 per M sq. ft. f.o.b. cars delivered to dealers' warehouse or siding in the following markets:

—Cuyahoga County (Cleveland) and towns of Willoughby and Wickliffe, Ohio
†—Dauphin County, Pennsylvania (Harrisburg)
—Douglas County, Nebraska, (Omaha)
†—Franklin County, Massachusetts, (Greenfield)
—Franklin County, Ohio, (Columbus)
—Hampden County, Massachusetts (Springfield)
†—Hampshire County, Massachusetts, (Northampton)
—Hanover County, Virginia
—Hartford County, Connecticut (Hartford)
—Hennepin County, Minnesota (Minneapolis)
—Henrico County, Virginia (Richmond)
—Kent County, Rhode Island
—Lancaster County, Pennsylvania (Lancaster)
—Marion County, Indiana (Indianapolis)
—Norfolk County, Virginia (Norfolk)
—Oklahoma County, Oklahoma (Oklahoma City)
—Peoria County, Illinois (Peoria)
—Pottawatomie County, Iowa (Council Bluffs)
—Princess Anne County, Virginia
—Providence County, Rhode Island (Providence)
—Ramsey County, Minnesota (St. Paul)
—Roanoke County, Virginia (Roanoke)
—Sangamon County, Illinois (Springfield)
—Tulsa County, Oklahoma (Tulsa)
—Woodbury County, Iowa (Sioux City)

also following towns in Missouri; St. Louis, Ferguson, Kinloch, Overland, Brentwood, Kirkwood, Jennings, Wellston, Clayton, Webster Groves, Maplewood, Gravois Station, Old Orchard and Lake Junction.

(c) $16.00 per M sq. ft. f.o.b. cars delivered to dealers' warehouse or siding in the following markets:

—Buchanan County, Missouri (St. Joseph)
—Cass County, North Dakota (Fargo)
—DeKalb County, Georgia
—Fulton County, Georgia (Atlanta)
—Greene County, Missouri (Springfield)
—Jasper County, Missouri (Joplin)
—Lancaster County, Nebraska (Lincoln)
—Minnehaha County, South Dakota (Sioux Falls)
—Newton County, Missouri (Joplin)
—Sedgewick County, Kansas (Wichita)

† Indicates changes in this reissue (changes become effective June 23, 1936).

also towns of Kansas City, Dodson and Edgecomb, Missouri, and Rosedale, Waldo, Argentine, Westport, Overland Park and Kansas City, Kansas.

(d) For shipment to Meadville, Pennsylvania for the Meadville Housing Operation, the minimum price of 5/16" patented gypsum plasterboard is as stated in telegram dated April 15, 1936.

9826 (8) 3/8" Plasterboard Exceptions:

(a) The minimum price of 3/8" patented gypsum plasterboard, in straight and pool carloads, or in mixed carloads with other gypsum products is $15.00 per M sq. ft. f.o.b. cars delivered to dealers warehouse or siding in (Detroit Area) Wayne County, Michigan; towns of Birmingham, Clawson, Farmington, Ferndale and Royal Oak in Oakland County, Michigan; also towns of Warren, Halfway, Fraser, Roseville and Centerline in Macomb County, Michigan.

(b) The minimum price of 3/8" patented gypsum plasterboard, in straight and pool carloads, or in mixed carloads with other gypsum products is $21.87 per M sq. ft. f.o.b. cars delivered to dealers warehouse or siding in Palm Beach, Dade, Broward and Monroe Counties, Florida .

†(9) In straight carloads of patented gypsum board and/or lath products consigned to one destination and invoiced to one account, minimum prices of patented gypsum board products f.o.b. cars delivered to dealers warehouse or siding within the Metro New York-New Jersey, Philadelphia and Boston areas (as described below) shall be same as prices applying f.o.b. cars New Brighton, Philadelphia or Boston mills. This applies into areas as follows:

Metro New York-New Jersey Area: Manhattan, Bronx, Kings, Queens, Richmond, Westchester, Rockland, Nassau and Suffolk Counties, N. Y., also Hudson, Essex, Union, Bergen, Passaic, Morris, Middlesex, Mercer, Somerset, Monmouth, Hunterdon, Warren, Sussex and Ocean Counties, New Jersey. Exception: Refer to section (e) of paragraph (6) and section (a) of paragraph (7) for minimum prices of 1/2" T&G Sheathing into Queens and Nassau Counties and several towns in Suffolk County, New

† Indicates change in this reissue.

York, also of 5/16" plasterboard into Mercer County, New Jersey.

Philadelphia Area: Bucks, Montgomery, Chester, Delaware and Philadelphia Counties, Pennsylvania and Camden County, New Jersey.

Boston Area: Essex, Middlesex, Suffolk and Norfolk counties, Mass., the town of Mansfield, Mass., that portion of Plymouth County lying north of the continuation of the southern boundary of Norfolk County, Mass., Rockingham and Strafford Counties, New Hampshire; York and Cumberland Counties, Maine.

Where any licensee or any of its employees, salesmen or executives has knowledge or notice, either directly or indirectly, that orders for less than straight car quantities of patented gypsum board products to be shipped into the above defined areas have been pooled for the purpose of or for effect of obtaining the reduced price for straight cars for each participant in the pool, licensor shall regard such sale as made at a price less than the minimum price fixed by the licensor and a violation of the terms of the license agreement.

9827 including Phillips, Petroleum, Musselshell, Yellowstone and Carbon Counties minimum price of 3/8" patented gypsum wallboard is $25.00 per M sq. ft. f.o.b. Acme, Texas; Sweetwater, Texas; Southard, Oklahoma; Fort Dodge, Iowa; Grand Rapids, Michigan; East Chicago, Indiana; Gypsum, Ohio; Plasterco, Virginia; and Philadelphia, Pennsylvania; or $31.25 per M sq. ft. f.o.b. Laramie, Wyoming and $31.00 per M sq. ft. f.o.b. Loveland, Colorado.

(b) For shipment into states of North Dakota, South Dakota, Nebraska and Kansas, minimum price of 3/8" patented gypsum wallboard is $26.00 per M sq. ft. f.o.b. Fort Dodge, Iowa and Southard, Oklahoma.

(c) For shipment into states of Minnesota and Missouri, minimum price of 3/8" patented gypsum wallboard is $26.00 per M sq. ft. f.o.b. Fort Dodge, Iowa and Southard, Oklahoma; or $28.50 per M sq. ft. f.o.b. East Chicago, Indiana and Grand Rapids, Michigan.

†(d) For shipment into states of Maine, New Hampshire, Vermont, Wisconsin and Upper Michigan, also into Kentucky (not including Boone, Kenton and Campbell counties), also into West Virginia (not including Hancock,

† Indicates changes in this reissue.

Brooke, Ohio and Marshall Counties), also for shipment into Tazewell and Buchanan counties only in state of Virginia, also for shipment into Essex, Middlesex, Suffolk and Norfolk Counties, Mass., the town of Mansfield, Mass. and that portion of Plymouth County lying north of the continuation of the southern boundary of Norfolk County, Mass., minimum price of 3/8" patented gypsum wallboard is $27.00 per M sq. ft. f.o.b. Oakfield, New York; Boston, Massachusetts; Plasterco, Virginia; Gypsum, Ohio; East Chicago, Indiana; Grand Rapids, Michigan; and Fort Dodge, Iowa.

(5) 1/2" Wallboard Exceptions:

(a) For shipment into states of New Mexico, Oklahoma, Texas and Arkansas, also into Caddo, Bossier, De Soto, Red River, Bienville, Webster and Claiborne Counties, Louisiana, minimum price of 1/2" patented gypsum wallboard is $26.00 per M sq. ft. f.o.b. Acme, Texas; Sweetwater, Texas; Southard, Oklahoma; and Fort Dodge, Iowa.

(b) For shipment into states of North Carolina, South Carolina, Georgia, Florida, Tennessee, Alabama, Mississippi, Louisiana (except counties listed in (a) above), Kansas, Nebraska, South Dakota, North Dakota and that portion of Montana east of but not including Phillips, Petroleum, Musselshell, Yellowstone and Carbon Counties, minimum price of 1/2" patented gypsum wallboard is $29.00 per M sq. ft. f.o.b. Plasterco, Virginia; Philadelphia, Pennsylvania; Gypsum, Ohio; East Chicago, Indiana; Grand Rapids, Michigan; Fort Dodge, Iowa; Southard, Oklahoma; Sweetwater, Texas and Acme, Texas.

(c) For shipment into states of Minnesota and Missouri, minimum price of 1/2" patented gypsum wallboard is $29.00 per M sq. ft. f.o.b. Fort Dodge, Iowa and Southard, Oklahoma; or $31.00 per M sq. ft. f.o.b. East Chicago, Indiana and Grand Rapids, Michigan.

(d) For shipment into Cuyahoga County, Ohio, the minimum price of 1/2" patented gypsum wallboard is as stated in supplement to Board License Bulletin No. 1, dated March 6, 1936.

(6) 1/2" T&G Sheathing Exceptions:

(a) For shipment into Cooke, Lake, DuPage and McHenry Counties, Illinois, also Lake and Porter Counties,

Indiana in straight and pool carloads or in mixed carloads with other gypsum products, the minimum price of 1/2" patented gypsum sheathing is $17.66 per M sq. ft. f.o.b. cars delivered to dealers' warehouse or siding.

9828 including Phillips, Petroleum, Musselshell, Yellowstone and Carbon Counties minimum price of 3/8" patented gypsum wallboard is $25.00 per M sq. ft. f.o.b. Acme, Texas; Sweetwater, Texas; Southard, Oklahoma; Fort Dodge, Iowa; Grand Rapids, Michigan; East Chicago, Indiana; Gypsum, Ohio; Plasterco, Virginia; and Philadelphia, Pennsylvania; or $31.25 per M sq. ft. f.o.b. Laramie, Wyoming and $31.00 per M sq. ft. f.o.b. Loveland, Colorado.

(b) For shipment into states of North Dakota, South Dakota, Nebraska and Kansas, minimum price of 3/8" patented gypsum wallboard is $26.00 per M sq. ft. f.o.b. Fort Dodge, Iowa and Southard, Oklahoma.

(c) For shipment into states of Minnesota and Missouri, minimum price of 3/8" patented gypsum wallboard is $26.00 per M sq. ft. f.o.b. Fort Dodge, Iowa and Southard, Oklahoma; or $28.50 per M sq. ft. f.o.b. East Chicago, Indiana and Grand Rapids, Michigan.

†(d) For shipment into states of Maine, New Hampshire, Vermont, Rhode Island, Wisconsin and Upper Michigan, also into Kentucky (not including Boone, Kenton and Campbell counties), also into West Virginia (not including Hancock, Brooke, Ohio and Marshall Counties), also for shipment into Tazewell and Buchanan counties only in state of Virginia, also for shipment into Essex, Middlesex, Suffolk, Norfolk, Plymouth, Bristol, Barnstable, Dukes and Nantucket Counties, Massachusetts, minimum price of 3/8" patented gypsum wallboard is $27.00 per M sq. ft. f.o.b. Oakfield, New York; Boston, Massachusetts; Plasterco, Virginia; Gypsum, Ohio; East Chicago, Indiana; Grand Rapids, Michigan and Fort Dodge, Iowa.

(5) 1/2" Wallboard Exceptions:

(a) For shipment into states of New Mexico, Oklahoma, Texas and Arkansas, also into Caddo, Bossier, De Soto, Red River, Bienville, Webster and Claiborne Counties, Louisiana, minimum price of 1/2" patented gypsum wallboard is $26.00 per M sq. ft. f.o.b. Acme, Texas; Sweetwater, Texas; Southard, Oklahoma; and Fort Dodge, Iowa.

† Indicates changes in this reissue.

(b) For shipment into states of North Carolina, South Carolina, Georgia, Florida, Tennessee, Alabama, Mississippi, Louisiana (except counties listed in (a) above), Kansas, Nebraska, South Dakota, North Dakota and that portion of Montana east of but not including Phillips, Petroleum, Musselshell, Yellowstone and Carbon Counties, minimum price of 1/2" patented gypsum wallboard is $29.00 per M sq. ft. f.o.b. Plasterco, Virginia; Philadelphia, Pennsylvania; Gypsum, Ohio; East Chicago, Indiana; Grand Rapids, Michigan; Fort Dodge, Iowa; Southard, Oklahoma; Sweetwater, Texas and Acme, Texas.

(c) For shipment into states of Minnesota and Missouri, minimum price of 1/2" patented gypsum wallboard is $29.00 per M sq. ft. f.o.b. Fort Dodge, Iowa and Southard, Oklahoma; or $31.00 per M sq. ft. f.o.b. East Chicago, Indiana and Grand Rapids, Michigan.

(d) For shipment into Cuyahoga County, Ohio, the minimum price of 1/2" patented gypsum wallboard is as stated in supplement to Board License Bulletin No. 1, dated March 6, 1936.

(6) 1/2" T&G Sheathing Exceptions:

(a) For shipment into Cooke, Lake, DuPage and McHenry Counties, Illinois, also Lake and Porter Counties, Indiana in straight and pool carloads or in mixed carloads with other gypsum products, the minimum price of 1/2" patented gypsum sheathing is $17.66 per M sq. ft. f.o.b. cars delivered to dealers' warehouse or siding.

9829 UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

JULY 10, 1936

Carload Shipments
Board License Bulletin No. 1 (Page 1) Cancels Page 1
Dated June 2, 1936.

DEAR SIRS: Referring to our license contract with you, you are hereby notifield that effective July 13, 1936 the minimum prices at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent); including Haggerty patent number 1,500,452 and Hite patent number 1,230,297, are as follows:



Patented gypsum wallboard and plasterboard products shall be quoted and sold on a delivered basis, f.o.b. cars destination. Delivered price is lowest combination of mill price plus freight, including emergency freight charge (see page 2) from that mill to destination (See Note # page 2). In stopover cars delivered price for any part of car is carload delivered price as above defined to point of delivery of that part of car. In every case rates as shown in published railroad freight tariffs apply. To determine board footage required to meet straight or mixed carload minimum weights, as shown in published railroad freight tariffs, use weights per M sq. ft. as shown below:

Dealer Prices f.o.b. cars: (Applying for standard sizes as listed in Bulletin No. 4)	1/4" Gypsum Wallboard (Wt. 950# per M)	5/16" Gypsum Wallboard (Wt. 1175 per M) See Note.*	3/8" Gypsum Wallboard (Wt. 1400# per M)	1/2" Gypsum Wallboard (Wt. 1900# per M)	1/2" Gypsum Sheathing (Wt. 1900# per M)	3/4" Gypsum Wallboard (Wt. 3300# per M)	3/8" Tiled Gypsum Wallboard (Wt. 1400# per M)	1/4" Gypsum Plasterboard (Wt. 950# per M)	3/8" Gypsum Plasterboard (Wt. 1400# per M)	1/2" Gypsum Plasterboard (Wt. 1900# per M)	3/4" Gypsum Plasterboard (Wt. 3300# per M)
Acme, Texas	22.50	— —	28.50	31.00	22.00	— —	50.00	15.00	15.00	16.25	— —
Boston (Charlestown) Mass.	22.50	— —	28.50	31.00	22.00	— —	50.00	15.00	15.00	16.25	— —
Detroit, Mich.	22.50	— —	28.50	31.00	22.00	— —	50.00	15.00	15.00	16.25	— —
East Chicago, Ind.	22.50	— —	28.50	31.00	22.00	— —	50.00	15.00	15.00	16.25	— —
Fort Dodge, Iowa.	22.50	— —	28.50	31.00	22.00	36.50	50.00	15.00	15.00	16.25	20.00
Grand Rapids, Mich.	22.50	— —	28.50	31.00	22.00	— —	50.00	15.00	15.00	16.25	— —
Gypsum, Ohio	22.50	26.50	28.50	31.00	22.00	36.50	50.00	15.00	15.00	16.25	20.00
Laramie, Wyo.	26.75	— —	34.75	— —	— —	— —	56.25	— —	21.25	— —	— —
Loveland, Colo.	26.50	— —	34.50	39.00	— —	— —	56.00	— —	21.00	— —	— —
New Brighton, S. I., N. Y.	22.50	— —	28.50	31.00	22.00	— —	50.00	15.00	15.00	16.25	— —
Oakfield, N. Y.	22.50	26.50	28.50	31.00	22.00	36.50	50.00	15.00	15.00	16.25	20.00
Philadelphia, Pa.	22.50	— —	28.50	31.00	22.00	— —	50.00	15.00	15.00	16.25	— —
Plasterco, Va.	22.50	— —	28.50	31.00	22.00	— —	50.00	15.00	15.00	16.25	— —
Southard, Okla.	22.50	— —	28.50	31.00	22.00	36.50	50.00	15.00	15.00	16.25	20.00
Sweetwater, Texas	22.50	— —	28.50	31.00	22.00	— —	50.00	15.00	15.00	16.25	— —

* 5/16" Gypsum Wallboard is for sale to manufacturers only, for fabrication at their factories—not a dealer item.

9830 #Where an odd 'rate per ton' is in effect (example: $3.45 per ton) the freight per M sq. ft. shall be figured on basis of rate per cwt. nearest to rate per ton, fractions of less than ¼¢ per cwt to be dropped, fractions of ¼¢ per cwt. to ½¢ per cwt. to be considered as ½¢. Example: The rate of $3.45 per ton equals 17¼¢ per cwt. For purpose of arriving at delivered price, however, the rate of 17½¢ shall be used.

Emergency Freight Charges: The minimum delivered prices of patented gypsum wallboard and gypsum plasterboard are directly affected by the permissive order of the Interstate Commerce Commission authorizing an increase in freight rates. On Interstate traffic the freight increase becomes effective on the effective date of the Interstate tariff, and in Intrastate traffic the freight increase is effective when approved by the State Commission.

When emergency freight charges become effective the minimum delivered price of patented gypsum wallboard and gypsum plasterboard is to be the lowest combination of mill price plus freight, including emergency charge, from that mill to destination, as follows:

Where the minimum delivered price is the result of mill price plus Interstate freight, the increase is to be added on the effective date of the Interstate tariff.

Where the minimum delivered price is the result of mill price plus Intrastate freight, the increase is effective when approved by the State Commission.

The amount of increase in freight to be added to minimum f. o. b. mill prices of patented gypsum wallboard and gypsum plasterboard shall be as detailed in following schedule:

Opposite old rate, using the table below, is the proper new pricing rate, including emergency freight charge, in cents per 100 pounds:

Old rate	New rate	Old rate	New rate	Old rate	New rate
.05	.05	.18	.19	.31	.33
.055	.06	.185	.20	.315	.34
.06	.06	.19	.20	.32	.34
.065	.07	.195	.21	.325	.35
.07	.07	.20	.21	.33	.35
.075	.08	.205	.22	.335	.36
.08	.09	.21	.22	.34	.36
.085	.09	.215	.23	.345	.37
.09	.10	.22	.24	.35	.37
.095	.10	.225	.24	.355	.38
.10	.11	.23	.25	.36	.39
.105	.11	.235	.25	.365	.39
.11	.12	.24	.26	.37	.40
.115	.12	.245	.26	.375	.40
.12	.13	.25	.27	.38	.41
.125	.13	.255	.27	.385	.41
.13	.14	.26	.28	.39	.42
.135	.14	.265	.28	.395	.42
.14	.15	.27	.29	.40	.43
.145	.16	.275	.29	.405	.43
.15	.16	.28	.30	.41	.44
.155	.17	.285	.30	.415	.44
.16	.17	.29	.31	.42	.45
.165	.18	.295	.32	.425	.45
.17	.18	.30	.32	.43	.46
.175	.19	.305	.33		

On all old rates over 43¢ per cwt. to secure new rate add flat 3¢ per cwt. (.435 becomes .465, .44 becomes .47, etc.)

9831 Stopover, Switching and Other Extra Delivery Charges:

All stopover charges, switching charges and other extra delivery charges, including full Emergency Increase applicable to such charges, will be paid by customers. Exception: Stopover charges need not be included on shipments into the states of Michigan, Wisconsin, Illinois, Indiana, Ohio, Kansas, Missouri, Arkansas, Oklahoma, Iowa, Minnesota, North Dakota, South Dakota, Texas, Nebraska, Kentucky, Montana, Colorado and Wyoming; also stopover charges need not be included on shipments to destinations within any Gypsum Board Trucking Area wherein the delivered price in pool or mixed carloads is same as delivered price when delivered by truck.

The above prices apply to the sale of all board embodying the claims of our patents in all markets except where an exception is made as hereinafter expressly stated:

(1) Until further notice the above minimum prices shall not apply to sales of patented gypsum wallboard and gypsum plasterboard products for shipment to or delivery

in the following area: States of California, Arizona, Nevada, Utah, Idaho, Oregon and Washington, also that portion of State of Montana west of and including Phillips, Petroleum, Musselshell, Yellowstone and Carbon Counties.

(2) 1/4" Wallboard Exceptions:

(a) For shipment into states of Florida, New Mexico, Colorado and Wyoming, also that portion of Montana east of but not including Phillips, Petroleum, Musselshell, Yellowstone and Carbon Counties, minimum price of 1/4" patented gypsum wallboard is $20.00 per M sq.ft. f.o.b. Acme, Texas; Sweetwater, Texas; Southard, Oklahoma; Plasterco, Virginia; and Fort Dodge, Iowa; or $24.25 per M sq.ft. f.o.b. Laramie, Wyoming and $24.00 per M sq.ft. f.o.b. Loveland, Colorado.

(b) For shipment into states of Oklahoma, Texas, Arkansas, Louisiana, Mississippi, Tennessee, Alabama, Georgia, South Carolina and North Carolina, minimum price of 1/4" patented gypsum wallboard is $21.00 per M sq.ft. f.o.b. Acme, Texas; Sweetwater, Texas; Southard, Oklahoma; Fort Dodge, Iowa; Grand Rapids, Michigan; East Chicago, Indiana; Gypsum, Ohio; Plasterco, Virginia and Philadelphia, Pennsylvania.

†(c) For shipment into states of North Dakota, South Dakota, Nebraska and Kansas, minimum price of 1/4" patented gypsum wallboard is $21.00 per M sq.ft. f.o.b. Fort Dodge, Iowa and Southard, Oklahoma.

†(d) For shipment into states of Minnesota, Iowa and Missouri minimum price of 1/4" patented gypsum wallboard is $21.00 per M sq.ft. f.o.b. Fort Dodge, Iowa and Southard, Oklahoma, or $22.50 per M sq.ft. f.o.b. Grand Rapids, Michigan and East Chicago, Indiana.

†(e) For shipment into states of Virginia, Kentucky (not including Boone, Kenton and Campbell Counties) and West Virginia (not including Hancock, Brooke, Ohio and Marshall counties), minimum price of 1/4" patented gypsum wallboard is $21.00 per M sq.ft. f.o.b. Plasterco, Virginia or $22.50 per M sq.ft. f.o.b. Philadelphia, Pennsylvania; Oakfield, New York; Gypsum, Ohio; Grand Rapids, Michigan; and East Chicago, Indiana.

(3) 3/8" Wallboard Exceptions:

†(a) For shipment into states of New Mexico, Colorado, Wyoming, North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, Texas, Arkansas, Louisiana, Mississippi, Tennessee, Alabama, Georgia, South Carolina, North Carolina and Florida, also into that portion of Montana east of

but not including Phillips, Petroleum, Musselshell, Yellowstone and Carbon Counties minimum price of 3/8"
9832 patented gypsum wallboard is $25.00 per M sq.ft. f.o.b. Acme, Texas; Sweetwater, Texas; Southard, Oklahoma; Fort Dodge, Iowa; Grand Rapids, Michigan; East Chicago, Indiana; Gypsum, Ohio; Plasterco, Virginia; and Philadelphia, Pennsylvania; or $31.25 per M sq.ft. f.o.b. Laramie, Wyoming and $31.00 per M sq.ft. f.o.b. Loveland, Colorado.

†(b) For shipment into states of Minnesota, Iowa and Missouri, minimum price of 3/8" patented gypsum wallboard is $26.00 per M sq.ft. f.o.b. Fort Dodge, Iowa and Southard, Oklahoma; or $27.00 per M sq.ft. f.o.b. East Chicago, Indiana; or $28.50 per M sq.ft. f.o.b. Grand Rapids, Michigan.

†(c) For shipment into the District of Columbia and states of Maine, New Hampshire, Vermont, Rhode Island, Massachusetts, Maryland, Virginia, Wisconsin and Upper Michigan, also into Kentucky (not including Boone, Kenton and Campbell counties), also into West Virginia (not including Hancock, Brooke, Ohio and Marshall counties), minimum price of 3/8" patented gypsum wallboard is $27.00 per M sq.ft. f.o.b. Oakfield, New York; Boston, Massachusetts; Philadelphia, Pennsylvania; Plasterco, Virginia; Gypsum, Ohio; East Chicago, Indiana; Grand Rapids, Michigan and Fort Dodge, Iowa.

†(d) For shipment into states of Illinois and Indiana, minimum price of 3/8" patented gypsum wallboard is $27.00 per M sq.ft. f.o.b. East Chicago, Indiana or $28.50 per M sq.ft. f.o.b. Fort Dodge, Iowa; Grand Rapids, Michigan; and Gypsum, Ohio.

(4) 1/2" Wallboard Exceptions:

(a) For shipment into states of New Mexico, Oklahoma, Texas and Arkansas, also into Caddo, Bossier, De Soto, Red River, Bienville, Webster and Claiborne counties, Louisiana, minimum price of 1/2" patented gypsum wallboard is $26.00 per M sq.ft. f.o.b. Acme, Texas; Sweetwater, Texas; Southard, Oklahoma; and Fort Dodge, Iowa.

†(b) For shipment into states of North Carolina, South Carolina, Georgia, Florida, Tennessee, Alabama, Mississippi, Louisiana (except counties listed in (a) above), Kansas, Nebraska, South Dakota, North Dakota, Colorado, Wyoming, and that portion of Montana east of but not including Phillips, Petroleum, Musselshell, Yellowstone and Carbon counties, minimum price of 1/2" patented gypsum wallboard is $27.00 per M sq.ft. f.o.b. Plasterco, Virginia;

Philadelphia, Pennsylvania; Gypsum, Ohio; East Chicago, Indiana; Grand Rapids, Michigan; Fort Dodge, Iowa; Southard, Oklahoma; Sweetwater, Texas and Acme, Texas.

(c) For shipment into states of Minnesota, Iowa and Missouri, minimum price of 1/2" patented gypsum wallboard is $28.00 per M sq.ft. f.o.b. Fort Dodge, Iowa and Southard, Oklahoma; or $31.00 per M sq.ft. f.o.b. East Chicago, Indiana and Grand Rapids, Michigan.

(5) 1/2" T&G Sheathing Exceptions:

(a) For shipment into Cooke, Lake, DuPage and McHenry counties, Illinois, also Lake and Porter counties, Indiana in straight and pool carloads or in mixed carloads with other gypsum products, the minimum price of 1/2" patented gypsum sheathing is $17.66 per M sq.ft. f.o.b. cars delivered to dealers' warehouse or siding.

9833 (b) For shipment into Allegheny County (Pittsburgh) Pennsylvania in straight and pool carloads or in mixed carloads with other gypsum products, the minimum price of 1/2" patented gypsum sheathing is $21.42 per M sq.ft. f.o.b. cars delivered to dealers' warehouse or siding.

(c) For shipment into Wayne County, Michigan, towns of Birmingham, Clawson, Farmington, Ferndale and Royal Oak in Oakland County, Michigan; also towns of Warren, Halfway, Fraser, Roseville and Centerline in Macomb County, Michigan, in straight and pool carloads or in mixed carloads with other gypsum products, the minimum price of 1/2" patented gypsum sheathing is $20.47 per M sq.ft. f.o.b. cars delivered to dealers' warehouse or siding.

(d) For shipment into Orange, Ulster, Sullivan, Putnam and Dutchess Counties, New York, in straight and pool carloads or in mixed carloads with other gypsum products, the minimum price of 1/2" patented gypsum sheathing is $24.80 per M sq.ft. f.o.b. cars delivered to dealers' warehouse or siding.

(e) For shipment into Queens and Nassau counties, New York, also towns of Amityville, Huntington, Northport, Babylon, Lindenhurst, Bayshore and Cold Springs Harbor in Suffolk County, New York, the minimum price of 1/2" patented gypsum sheathing is $19.00 per M sq.ft. for shipment in straight carloads of patented gypsum board products consigned to one destination and invoiced to one account, or $20.00 per M sq.ft. for shipment in pool cars or mixed cars, f.o.b. cars delivered to dealers' warehouse or siding.

(f) For shipment into Erie and Niagara counties, New York, the minimum price of ½" patented gypsum sheathing is $15.00 per M sq.ft. f.o.b. Oakfield, New York.

(g) For shipment into states of Oklahoma and Texas, also into Caddo, Bossier, De Soto, Red River, Bienville, Webster and Claiborne Counties, Louisiana, the minimum price of 1/2" patented gypsum sheathing is $26.00 per sq.ft. f.o.b. Acme, Texas; Sweetwater, Texas; and Southard, Oklahoma.

(6) 5/16" Plasterboard. The minimum price of 5/16" patented gypsum plasterboard (weight 1175# per M), in straight and pool carloads, or in mixed carloads with other gypsum products, for shipment into following markets only, is as follows:

(a) $15.00 per M sq.ft. f.o.b. cars delivered to dealers' warehouse or siding in the following markets:

—Cuyahoga County (Cleveland) and towns of Willoughby and Wickliffe, Ohio.
—Dauphin County, Pennsylvania (Harrisburg)
—Douglas County, Nebraska, (Omaha)
—Franklin County, Massachusetts, (Greenfield)
—Franklin County, Ohio (Columbus)
—Hampden County, Massachusetts (Springfield)
—Hampshire County, Massachusetts, (Northampton)
—Hanover County, Virginia
—Hartford County, Connecticut (Hartford)
—Hennepin County, Minnesota (Minneapolis)
—Henrico County, Virginia (Richmond)
—Kent County, Rhode Island
9834 —Lancaster County, Pennsylvania (Lancaster)
—Marion County, Indiana (Indianapolis)
—Mercer County, New Jersey (Trenton) See paragraph (9) for minimum quantity required for shipment in pool cars or mixed cars.
—Norfolk County, Virginia (Norfolk)
—Oklahoma County, Oklahoma (Oklahoma City)
—Peoria County, Illinois (Peoria)
—Pottawatomie County, Iowa (Council Bluffs)
—Princess Anne County, Virginia
—Providence County, Rhode Island (Providence)
—Ramsey County, Minnesota (St. Paul)
—Roanoke County, Virginia (Roanoke)
—Sangamon County, Illinois (Springfield)
—Tulsa County, Oklahoma (Tulsa)
—Woodbury County, Iowa (Sioux City)

also following towns in Missouri; St. Louis, Ferguson, Kinloch, Overland, Brentwood, Kirkwood, Jennings, Wellston, Clayton, Webster Groves, Maplewood, Gravois Station, Old Orchard and Lake Junction.

(b) $16.00 per M sq. ft. f.o.b. cars delivered to dealers' warehouse or siding in the following markets:

—Buchanan County, Missouri (St. Joseph)
—Cass County, North Dakota (Fargo)
—DeKalb County, Georgia
—Fulton County, Georgia (Atlanta)
—Greene County, Missouri (Springfield)
—Jasper County, Missouri (Joplin)
—Lancaster County, Nebraska (Lincoln)
—Minnehaha County, South Dakota (Sioux Falls)
—Newton County, Missouri (Joplin)
—Sedgewick County, Kansas (Wichita)

also towns of Kansas City, Dodson and Edgecomb, Missouri, and Rosedale, Waldo, Argentine, Westport, Overland Park and Kansas City, Kansas.

(7) 3/8" Plasterboard Exceptions:

(a) The minimum price of 3/8" patented gypsum plasterboard, in straight and pool carloads, or in mixed carloads with other gypsum products is $15.00 per M sq. ft. f.o.b. cars delivered to dealers warehouse or siding in (Detroit Area) Wayne County, Michigan; towns of Birmingham, Clawson, Farmington, Ferndale and Royal Oak in Oakland County, Michigan; also towns of Warren, Halfway, Fraser, Roseville and Centerline in Macomb County, Michigan.

(b) The minimum price of 3/8" patented gypsum plasterboard, in straight and pool carloads, or in mixed carloads with other gypsum products is $21.87 per sq. ft. f.o.b. cars delivered to dealers warehouse or siding in Palm Beach, Dade, Broward and Monroe Counties, Florida.

9835 (8) In straight carloads of patented gypsum board and/or lath products consigned to one destination and invoiced to one account, minimum prices of patented gypsum board products f.o.b. cars delivered to dealers warehouse or siding within the Metro New York-New Jersey, Philadelphia and Boston areas (as described below) shall be same as prices applying f.o.b. cars New Brighton, Philadelphia or Boston mills. This applies into areas as follows:

Metro New York-New Jersey Area: Manhattan, Bronx, Kings, Queens, Richmond, Westchester, Rockland, Nassau and Suffolk Counties, N. Y., also Hudson, Essex, Union,

Bergen, Passaic, Morris, Middlesex, Mercer, Somerset, Monmouth, Hunterdon, Warren, Sussex and Ocean Counties, New Jersey. Exception: Refer to section (e) of paragraph (5) and section (a) of paragraph (6) for minimum prices of 1/2" T&G Sheathing into Queens and Nassau Counties and several towns in Suffolk County, New York, also of 5/16" plasterboard into Mercer County, New Jersey.

Philadelphia Area: Bucks, Montgomery, Chester, Delaware and Philadelphia Counties, Pennsylvania and Camden County, New Jersey.

Boston Area: Essex, Middlesex, Suffolk and Norfolk counties, Mass., the town of Mansfield, Mass., that portion of Plymouth County lying north of the continuation of the southern boundary of Norfolk County, Mass., Rockingham and Strafford Counties, New Hampshire; York and Cumberland Counties, Maine.

Where any licensee or any of its employees, salesmen or executives has knowledge or notice, either directly or indirectly, that orders for less than straight car quantities of patented gypsum board products to be shipped into the above defined areas have been pooled for the purpose of or for effect of obtaining the reduced price for straight cars for each participant in the pool, licensor shall regard such sale as made at a price less than the minimum price fixed by the licensor and a violation of the terms of the license agreement.

†(9) For minimum prices of patented gypsum board products, in pool cars or in mixed cars with other gypsum products, f.o.b. cars delivered to dealers warehouse or siding within the Metro New York-New Jersey, Philadelphia and Boston Areas as described in paragraph (8) above, add $1.00 per M sq. ft. to prices applying f.o.b. cars New Brighton, Philadelphia or Boston mills. Exceptions: Refer to section (e) of paragraph (5) and section (a) of paragraph (6) for minimum prices of 1/2" T&G Sheathing into Queens and Nassau Counties and several towns in Suffolk County, New York, also of 5/16" plasterboard into Mercer County, New Jersey.

On pool cars or mixed cars into the Metro New York—New Jersey Area, the Philadelphia Area and the Boston Area as described in paragraph (8) above, minimum quantity is 5000 sq. ft. of patented gypsum board and/or lath products consigned to one destination and invoiced to one account. Note: Any mixture of metallized and regular patented board products (including special surfaced gypsum board products) may be combined to make up the required minimums.

9836 (10) Grand Rapids Switching District. For minimum prices of patented gypsum board products, in straight and pool cars, or in mixed cars with other gypsum products, f.o.b. cars delivered to dealers warehouse or siding within the Grand Rapids, Michigan Switching District, add $1.00 per M sq. ft. to prices applying f.o.b. cars, Grand Rapids mill.

(11) Chicago Area. For minimum prices of patented gypsum board products, in straight and pool cars, or in mixed cars with other gypsum products (either 40,000# or 60,000# cars) f.o.b. cars delivered to dealers warehouse or siding within the Chicago Area, add 50¢ per M sq. ft. to prices applying f.o.b. cars, East Chicago mill. This applies into Cook and DuPage Counties, Illinois, Lake County, Indiana and following towns in Lake County, Illinois: Deerfield, Highland Park and Lake Forest. Exception: Minimum price of 1/2" gypsum sheathing for shipment into the Chicago Area as described above is $17.66 per M sq. ft. f.o.b. cars delivered to dealers warehouse or siding.

(12) Detroit Area. For minimum prices of patented gypsum board products, in straight and pool cars or in mixed cars with other gypsum products, f.o.b. cars delivered to dealers warehouse or siding within the Detroit Area, add 60¢ per M sq. ft. to prices applying f.o.b. cars, Detroit mill. This applies into Wayne County, Michigan; towns of Birmingham, Clawson, Farmington, Ferndale and Royal Oak in Oakland County, Michigan; and towns of Warren, Halfway, Fraser, Roseville and Centerline, in Macomb County, Michigan. Exception: Minimum price of 3/8" gypsum plasterboard is $15.00 per M sq. ft. and minimum price of 1/2" gypsum sheathing is $20.47 per M sq. ft. f.o.b. cars delivered to dealers warehouse or siding within the Detroit Area as described above.

(13) 24" x 48" Cutstock Plasterboard. In states of Kansas, Missouri, Oklahoma, Arkansas, Mississippi and Alabama the minimum price is $17.50 per M sq. ft. for 1/4" and 3/8" thickness and $18.75 per M sq. ft. for 1/2" thickness, f.o.b. Plasterco, Va., Grand Rapids, Mich., Fort Dodge, Iowa; East Chicago, Indiana; Gypsum, Ohio; Southard, Oklahoma; Sweetwater, Texas and Acme, Texas.

(14) 1/4" and 3/8" Cutstock Plasterboard. Minimum price for shipment to Niagara, Erie (including the town of Gowanda, New York) Monroe and Wayne Counties, N. Y. is $12.50 per M sq. ft. f.o.b. cars Oakfield, N. Y.

This price does not apply to 32" x 48" board.

(15) 32" x 48" Gypsum Board. In all areas 32" x 48" gypsum board is subject to the minimum wallboard price except:

(a) Where used for specific roof jobs it is subject to the minimum plasterboard price for such specific jobs.

9837 (b) In all states east of the Mississippi River and in the states of Iowa, Minnesota, Missouri, Nebraska, Colorado, Kansas, Oklahoma, Arkansas and Louisiana, 32" x 48" board, if grey surfaced and round edged, is subject to minimum plasterboard price.

(c) In Henrico County, Virginia only, 32" x 48" cutstock plasterboard is subject to minimum plasterboard price.

(16) 36" x 48" Gypsum Board. 36" x 48" is standard plasterboard size in all states for use on specific gypsum roof jobs only and is subject to minimum plasterboard price for such specific gypsum roof jobs.

(17) Delivered Carload Minimum Prices in Certain Suburbs Same as in City Proper, as Indicated Below:

Delivered Carload Minimum Prices in—	*Same as—*
College Park, Ga.	Atlanta, Ga.
Elkridge, and Glen Burnie, Maryland	Baltimore, Md.
Bristol, Tenn.	Bristol, Va.
Cook and DuPage counties, Ill.; Lake County, Indiana; also following towns in Lake County, Illinois; Deerfield, Highland Park and Lake Forest.	Chicago, Ill.
Cheviot & Bridgetown, O.	Cincinnati, O.
Euclid, North Randall and Bedford, O.	Cleveland, O.
Wayne County; and towns of Birmingham, Clawson, Farmington, Ferndale and Royal Oak, in Oakland County; and Warren, Halfway, Fraser, Roseville, and Centerline in Macomb County, Michigan.	Detroit, Michigan
Dodson and Edgecomb, Mo.; Rosedale, Waldo, Argentine, Westport, Overland Park and Kansas City, Kansas.	Kansas City, Mo.
Kings County, N. Y.	Brooklyn, N. Y.
Ferguson, Kinlock, Overland, Brentwood, Kirkwood, Jennings, Wellston, Clayton, Webster Groves, Maplewood, Gravois Station, Old Orchard and Lake Junction, Mo.	St. Louis, Mo.
Armory, Indian Orchard, Oak Street and Chicopee, Mass.	Springfield, Mass.
South Windham, Maine	Portland, Maine
Gabe, Sheppard and Wilmont, Okla.	Okla. City, Okla.
Arlington Siding (Poughkeepsie), N. Y.	Poughkeepsie, N. Y.
Roselyn, Virginia	Washington, D. C.

9838 (18) Sales to Contractors and Prefabricated House Manufacturers, Also Extras on Odd Sizes:

(a) On sales of standard sizes to contractors, roofing contractors, metal ceiling contractors and prefabricated house manufacturers, and differentials per M sq. ft. as follows. (Note: Sales to roofing contractors are for specific roof jobs only):

To Contractors (Incl. Metal Ceiling Contrs.) & to Prefabricated House Mfrs. Std. Sizes		To Roofing Contractors Std. Sizes	
W. Bd.	Pl. Bd.	W. Bd.	Pl. Bd.
2.50	1.25	1.25	1.25

(b) On sales of odd sizes to dealers, contractors, roofing contractors, metal ceiling contractors and prefabricated house manufacturers, add differentials per M sq. ft. as follows. (Note: Sales to roofing contractors are for specific roof jobs only):

To Dealers Odd Sizes		To Contractors (Incl. Metal Ceiling Contrs.) & to Prefabricated House Mfrs. Odd Sizes		To Roofing Contractors Odd Sizes	
W. Bd.	Pl. Bd.	W. Bd.	Pl. Bd.	W. Bd.	Pl. Bd.
2.50	1.25	5.00	2.50	1.25	1.25

Yours very truly,

UNITED STATES GYPSUM COMPANY

———— ————, *Vice President.*

† Indicates change in this reissue.

9839 UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

JULY 23, 1936.

Carload Shipments
Board License Bulletin No. 1—Cancels Board License Bulletin No. 1 Dated July 10, 1936.

DEAR SIRS: Referring to our license contract with you, you are hereby notified that effective July 28, 1936 the minimum price at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent); including Haggerty patent number 1,500,452 and Hite patent number 1,230,297, are as follows:

Patented gypsum wallboard and plasterboard products shall be quoted and sold on a delivered basis, f.o.b. cars destination. Delivered price is lowest combination of mill price plus freight, including emergency freight charge (see page 2) from that mill to destination (See Note # page 2). In stopover cars delivered price for any part of car is carload delivered price as above defined to point of delivery of that part of car. In every case rates as shown in published railroad freight tariffs apply. To determine board footage required to meet straight or mixed carload minimum weights, as shown in published railroad freight tariffs, use weights per M sq. ft. as shown below:

Dealer Prices f.o.b. cars: (Applying for standard sizes as listed in Bulletin No. 4)	1/4" Gypsum Wallboard (Wt. 950 # per M)	5/16" Gypsum Wallboard (Wt. 1175 per M) See Note *	3/8" Gypsum Wallboard (Wt. 1400 # per M)	1/2" Gypsum Wallboard (Wt. 1900 # per M)	1/2" Gypsum Sheathing (Wt. 1900 # per M)	3/4" Gypsum Wallboard (Wt. 3300 # per M)	3/8" Tiled Gypsum Wallboard (Wt. 1400 # per M)	1/4" Gypsum Plasterboard (Wt. 950 # per M)	3/8" Gypsum Plasterboard (Wt. 1400 # per M)	1/2" Gypsum Plasterboard (Wt. 1900 # per M)	3/4" Gypsum Plasterboard (Wt. 3300 # per M)
†Acme, Texas	21.00	— —	27.00	29.00	22.00	— —	50.00	15.00	15.00	16.25	— —
†Boston (Charlestown) Mass.	21.00	— —	27.00	29.00	22.00	— —	50.00	15.00	15.00	16.25	— —
†Detroit, Mich.	21.00	— —	27.00	29.00	22.00	— —	50.00	15.00	15.00	16.25	— —
†East Chicago, Ind.	21.00	— —	27.00	29.00	22.00	36.50	50.00	15.00	15.00	16.25	20.00
†Fort Dodge, Iowa	21.00	— —	27.00	29.00	22.00	— —	50.00	15.00	15.00	16.25	— —
†Grand Rapids, Mich.	21.00	24.00	27.00	29.00	22.00	36.50	50.00	15.00	15.00	16.25	20.00
†Gypsum, Ohio	24.25	— —	31.25	— —	— —	— —	56.25	— —	21.25	— —	— —
†Laramie, Wyo.	24.00	— —	31.00	— —	— —	— —	56.00	— —	21.00	— —	— —
†Loveland, Colo.	21.00	— —	27.00	29.00	22.00	— —	50.00	15.00	15.00	16.25	— —
†New Brighton, S. I., N. Y.	21.00	24.00	27.00	29.00	22.00	36.50	50.00	15.00	15.00	16.25	20.00
†Oakfield, N. Y.	21.00	— —	27.00	29.00	22.00	— —	50.00	15.00	15.00	16.25	— —
†Philadelphia, Pa.	21.00	— —	27.00	29.00	22.00	— —	50.00	15.00	15.00	16.25	— —
†Plasterco, Va.	21.00	— —	27.00	29.00	22.00	36.50	50.00	15.00	15.00	16.25	20.00
†Southard, Okla.	21.00	— —	27.00	29.00	22.00	— —	50.00	15.00	15.00	16.25	— —
†Sweetwater, Texas											

* 5/16" Gypsum Wallboard is for sale to manufacturers only, for fabrication at their factories—not a dealer item.

9840 #Where an odd 'rate per ton' is in effect (example: $3.45 per ton) the freight per M sq. ft. shall be figured on basis of rate per cwt. nearest to rate per ton, fractions of less than ¼¢ per cwt. to be dropped, fractions of ¼¢ per cwt. to ½¢ per cwt. to be considered as ½¢. Example: The rate of $3.45 per ton equals 17¼¢ per cwt. For purpose of arriving at delivered price, however, the rate of 17½¢ shall be used.

Emergency Freight Charges: The minimum delivered prices of patented gypsum wallboard and gypsum plasterboard are directly affected by the permissive order of the Interstate Commerce Commission authorizing an increase in freight rates. On Interstate traffic the freight increase becomes effective on the effective date of the Interstate tariff, and in Intrastate traffic the freight increase is effective when approved by the State Commission.

When emergency freight charges become effective the minimum delivered price of patented gypsum wallboard and gypsum plasterboard is to be the lowest combination of mill price plus freight, including emergency charge, from that mill to destination, as follows:

Where the minimum delivered price is the result of mill price plus Interstate freight, the increase is to be added on the effective date of the Interstate tariff.

Where the minimum delivered price is the result of mill price plus Intrastate freight, the increase is effective when approved by the State Commission.

The amount of increase in freight to be added to minimum f. o. b. mill prices of patented gypsum wallboard and gypsum plasterboard shall be as detailed in following schedule:

Opposite old rate, using the table below, is the proper new pricing rate, including emergency freight charge, in cents per 100 pounds:

Old rate	New rate	Old rate	New rate	Old rate	New rate
.05	.05	.18	.20	.31	.33
.055	.06	.185	.20	.315	.34
.06	.06	.19	.20	.32	.34
.065	.07	.195	.21	.325	.35
.07	.07	.20	.21	.33	.35
.075	.08	.205	.22	.335	.36
.08	.09	.21	.22	.34	.36
.085	.09	.215	.23	.345	.37
.09	.10	.22	.24	.35	.37
.095	.10	.225	.24	.355	.38
.10	.11	.23	.25	.36	.39
.105	.11	.235	.25	.365	.39
.11	.12	.24	.26	.37	.40
.115	.12	.245	.26	.375	.40
.12	.13	.25	.27	.38	.41
.125	.13	.255	.27	.385	.41
.13	.14	.26	.28	.39	.42
.135	.14	.265	.28	.395	.42
.14	.15	.27	.29	.40	.43
.145	.16	.275	.29	.405	.43
.15	.16	.28	.30	.41	.44
.155	.17	.285	.30	.415	.44
.16	.17	.29	.31	.42	.45
.165	.18	.295	.32	.425	.45
.17	.18	.30	.32	.43	.46
.175	.19	.305	.33		

On all old rates over 43¢ per cwt. to secure new rate add flat 3¢ per cwt. (.435 becomes .465, .44 becomes .47, etc.)

9841 Stopover, Switching and Other Extra Delivery Charges:

All stopover charges, switching charges and other extra delivery charges, including full Emergency Increase applicable to such charges, will be paid by customers. Exception: Stopover charges need not be included on shipments into the states of Michigan, Wisconsin, Illinois, Indiana, Ohio, Kansas, Missouri, Arkansas, Oklahoma, Iowa, Minnesota, North Dakota, South Dakota, Texas, Nebraska, Kentucky, Montana, Colorado and Wyoming; also stopover charges need not be included on shipments to destinations within any Gypsum Board Trucking Area wherein the delivered price in pool or mixed carloads is same as delivered price when delivered by truck.

The above prices apply to the sale of all board embodying the claims of our patents in all markets except where an exception is made as hereinafter expressly stated:

(1) Until further notice the above minimum prices shall not apply to sales of patented gypsum wallboard and gypsum plasterboard products for shipment to or delivery in the following area: States of California, Arizona, Nevada, Utah, Idaho, Oregon and Washington, also that portion of

State of Montana west of and including Phillips, Petroleum, Musselshell, Yellowstone and Carbon Counties.

(2) 1/4" Wallboard Exceptions:

(a) For shipment into states of Florida, New Mexico, Colorado and Wyoming, also that portion of Montana east of but not including Phillips, Petroleum, Musselshell, Yellowstone and Carbon Counties, minimum price of 1/4" patented gypsum wallboard is $20.00 per M sq. ft. f.o.b. Acme, Texas; Sweetwater, Texas; Southard, Oklahoma; Plasterco, Virginia; and Fort Dodge, Iowa.

(3) 3/8" Wallboard Exceptions:

(a) For shipment into states of New Mexico, Colorado, Wyoming, North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, Texas, Arkansas, Louisiana, Mississippi, Tennessee, Alabama, Georgia, South Carolina, North Carolina and Florida, also into that portion of Montana east of but not including Phillips, Petroleum, Musselshell, Yellowstone and Carbon Counties minimum price of 3/8" patented gypsum wallboard is $25.00 per M sq. ft. f.o.b. Acme, Texas; Sweetwater, Texas; Southard, Oklahoma; Fort Dodge, Iowa; Grand Rapids, Michigan; East Chicago, Indiana; Gypsum, Ohio; Plasterco, Virginia; and Philadelphia, Pennsylvania.

(b) For shipment into states of Minnesota, Iowa and Missouri, minimum price of 3/8" patented gypsum wallboard is $26.00 per M sq. ft. f.o.b. Fort Dodge, Iowa and Southard, Oklahoma; or $27.00 per M sq. ft. f.o.b. East Chicago, Indiana and Grand Rapids, Michigan.

(4) 1/2" Wallboard Exceptions:

(a) For shipment into states of New Mexico, Oklahoma, Texas and Arkansas, also into Caddo, Bossier, De Soto, Red River, Bienville, Webster and Claiborne counties, Louisiana, minimum price of 1/2" patented gypsum wallboard is $26.00 per M sq. ft. f.o.b. Acme, Texas; Sweetwater, Texas; Southard, Oklahoma; and Fort Dodge, Iowa.

(b) For shipment into states of North Carolina, South Carolina, Georgia, Florida, Tennessee, Alabama, Mississippi, Louisiana (except counties listed in (a) above), Kansas, Nebraska, South Dakota, North Dakota, Colorado, Wyoming, and that portion of Montana east of but
9842 not including Phillips, Petroleum, Musselshell, Yellowstone and Carbon counties, minimum price

of 1/2" patented gypsum wallboard is $27.00 per M sq. ft. f.o.b. Plasterco, Virginia; Philadelphia, Pennsylvania; Gypsum, Ohio; East Chicago, Indiana; Grand Rapids, Michigan; Fort Dodge, Iowa; Southard, Oklahoma; Sweetwater, Texas and Acme, Texas.

†(c) For shipment into states of Minnesota, Iowa and Missouri, minimum price of 1/2" patented gypsum wallboard is $28.00 per M sq. ft. f.o.b. Fort Dodge, Iowa and Southard, Oklahoma; or $29.00 per M sq. ft. f.o.b. East Chicago, Indiana and Grand Rapids, Michigan.

(5) 1/2" T&G Sheathing Exceptions:

†(a) For shipment into Lake and McHenry counties, Illinois, also Porter county, Indiana in straight and pool carloads or in mixed carloads with other gypsum products, the minimum price of 1/2" patented gypsum sheathing is $17.66 per M sq. ft. f.o.b. cars delivered to dealers' warehouse or siding.

(b) For shipment into Allegheny County (Pittsburgh) Pennsylvania in straight and pool carloads or in mixed carloads with other gypsum products, the minimum price of 1/2" patented gypsum sheathing is $21.42 per M sq. ft. f.o.b. cars delivered to dealers' warehouse or siding.

(c) For shipment into Queens and Nassau counties, New York, also towns of Amityville, Huntington, Northport, Babylon, Lindenhurst, Bayshore and Cold Springs Harbor in Suffolk County, New York, the minimum price of 1/2" patented gypsum sheathing is $19.00 per M sq. ft. for shipment in straight carloads of patented gypsum board products consigned to one destination and invoiced to one account, or $20.00 per M sq. ft. for shipment in pool cars or mixed cars, f.o.b. cars delivered to dealers' warehouse or siding.

(d) For shipment into Erie and Niagara counties, New York, the minimum price of 1/2" patented gypsum sheathing is $15.00 per M sq. ft. f.o.b. Oakfield, New York.

(6) 5/16" Plasterboard. The minimum price of 5/16" patented gypsum plasterboard (weight 1175# per M), in straight and pool carloads, or in mixed carloads with other gypsum products, for shipment into following markets only, is as follows:

(a) $15.00 per M sq. ft. f.o.b. cars delivered to dealers' warehouse or siding in the following markets:

—Cuyahoga County (Cleveland) and towns of Willoughby and Wickliffe, Ohio.
—Dauphin County, Pennsylvania (Harrisburg)
—Douglas County, Nebraska (Omaha)
—Franklin County, Massachusetts (Greenfield)
—Franklin County, Ohio (Columbus)
—Hampden County, Massachusetts (Springfield)
—Hampshire County, Massachusetts (Northampton)
9843 —Hanover County, Virginia
—Hartford County, Connecticut (Hartford)
—Hennepin County, Minnesota (Minneapolis)
—Henrico County, Virginia (Richmond)
—Kent County, Rhode Island
—Lancaster County, Pennsylvania (Lancaster)
—Marion County, Indiana (Indianapolis)
—Mercer County, New Jersey (Trenton) See paragraph (8) for minimum quantity required for shipment in pool cars or mixed cars.
—Norfolk County, Virginia (Norfolk)
—Oklahoma County, Oklahoma (Oklahoma City)
—Peoria County, Illinois (Peoria)
—Pottawatomie County, Iowa (Council Bluffs)
—Princess Anne County, Virginia
—Providence County, Rhode Island (Providence)
—Ramsey County, Minnesota (St. Paul)
—Roanoke County, Virginia (Roanoke)
—Sangamon County, Illinois (Springfield)
—Tulsa County, Oklahoma (Tulsa)
—Woodbury County, Iowa (Sioux City)

also following towns in Missouri: St. Louis, Ferguson, Kinloch, Overland, Brentwood, Kirkwood, Jennings, Wellston, Clayton, Webster Groves, Maplewood, Gravois Station, Old Orchard and Lake Junction.

(b) $16.00 per M sq. ft. f.o.b. cars delivered to dealers' warehouse or siding in the following markets:

—Broward County, Florida
—Buchanan County, Missouri (St. Joseph)
—Cass County, North Dakota (Fargo)
—Dade County, Florida (Miami)
—DeKalb County, Georgia

—Fulton County, Georgia (Atlanta)
—Greene County, Missouri (Springfield)
—Jasper County, Missouri (Joplin)
—Lancaster County, Nebraska (Lincoln)
—Minnehaha County, South Dakota (Sioux Falls)
†—Monroe County, Florida
—Newton County, Missouri (Joplin)
†—Palm Beach County, Florida
—Sedgewick County, Kansas (Wichita)

also towns of Kansas City, Dodson and Edgecomb, Missouri, and Rosedale, Waldo, Argentine, Westport, Overland Park and Kansas City, Kansas.

(7) 3/8" Plasterboard Exceptions:

(a) The minimum price of 3/8" patented gypsum plasterboard, in straight and pool carloads, or in mixed carloads with other gypsum products is $21.87 per M sq. ft. f.o.b. cars delivered to dealers warehouse or siding in Palm Beach, Dade, Broward and Monroe Counties, Florida

9844 †(8) Delivery Price Areas

Prices of patented board products, in straight and pool cars or in mixed cars with other gypsum products, f.o.b. cars delivered to dealers warehouse or siding within areas listed below are as follows:

Del'd Prices into: (See Descriptions of Areas Below)		1/4" Gypsum Wallboard	3/8" Gypsum Wallboard	1/2" Gypsum Wallboard	1/2" Gypsum Sheathing	3/8" Tiled Gypsum Wallboard	1/4" Gypsum Lath	3/8" Gypsum Lath	1/2" Gypsum Lath
†Metro N. Y.—N. J., Boston and Philadelphia Areas (See Notes b & c)	Straight Cars	21.00	27.00	29.00	22.00	50.00	15.00	15.00	16.25
	Pool or Mxd. Cars	22.00	28.00	30.00	23.00	51.00	16.00	16.00	17.25
†Southeast New York & Southern New Jersey Areas, Also Lehigh and Northampton Counties, Penna. and New Castle County, Del.	Straight, Pool or Mxd. Cars	22.00	28.00	30.00	23.00	51.00	16.00	16.00	17.25
†Chicago Area	Straight, Pool or Mxd. Cars	21.50	27.50	29.50	17.66	50.50	15.50	15.50	16.75
†Detroit Area	Straight, Pool or Mxd. Cars	21.60	27.60	29.60	20.47	50.60	15.60	15.00	16.85
†Grand Rapids Switching Area	Straight, Pool or Mxd. Cars	22.00	28.00	30.00	23.00	51.00	16.00	16.00	17.25

Notes and Exceptions Applying to Delivered Price Areas Listed Above:

(a) Descriptions of Areas:

Metro New York-New Jersey Area: Manhattan, Bronx, Kings, Queens, Richmond, Westchester, Rockland, Nassau and Suffolk Counties, N. Y., also Hudson, Essex, Union, Bergen, Passaic, Morris, Middlesex, Mercer, Somerset, Monmouth, Hunterdon, Warren, Sussex and Ocean Counties, New Jersey.

Philadelphia Area: Bucks, Montgomery, Chester, Delaware and Philadelphia Counties, Pennsylvania and Camden County, New Jersey.

†Boston Area: Essex, Middlesex, Suffolk, Norfolk and Worcester counties, Mass., the town of Mansfield, Mass., that portion of Plymouth County lying north of the continuation of the southern boundary of Norfolk County, Mass., Rockingham and Strafford Counties, New Hampshire; York and Cumberland Counties, Maine.

†Southeast New York Area: Orange, Ulster, Sullivan, Putnam and Dutchess Counties, New York.

9845 †Southern New Jersey Area: Atlantic, Cape May, Gloucester, Salem, Cumberland and Burlington Counties, New Jersey.

Chicago Area: Cook and Du Page Counties, Illinois, Lake County, Indiana and following towns in Lake County, Illinois: Deerfield, Highland Park and Lake Forest.

†Detroit Area: Wayne County, Michigan; towns of Birmingham, Clawson, Farmington, Ferndale and Royal Oak in Oakland County, Michigan; and towns of Warren, Halfway, Fraser, Roseville, Saint Clair Shores and Centerline in Macomb County, Michigan.

Grand Rapids, Mich. Switching Area: As described in published railroad freight tariffs.

†(b) Delivered prices for shipment in straight cars into Metro New York-New Jersey, Philadelphia and Boston Areas apply on straight carloads of patented gypsum board products consigned to one destination and invoiced to one account. Any mixture of regular patented board products (including special surfaced gypsum board products) and metallized patented board products may be combined to make up the required minimum. Exceptions: Refer to

section (c) of paragraph (5) and section (a) of paragraph (6) for minimum prices of 1/2" T&G Sheathing into Queens and Nassau Counties and several towns in Suffolk County, New York, also of 5/16" plasterboard into Mercer County, New Jersey.

Where any licensee or any of its employees, salesmen or executives has knowledge or notice, either directly or indirectly, that orders for less than straight car quantities of patented gypsum board products to be shipped into the above defined areas have been pooled for the purpose of or for effect of obtaining the reduced price for straight cars for each participant in the pool, licensor shall regard such sale as made at a price less than the minimum price fixed by the licensor and a violation of the terms of the license agreement.

(c) In pool cars or mixed cars into the Metro New York-New Jersey area, Philadelphia area and the Boston area as described above, minimum quantity is 5000 sq. ft. of patented gypsum board and/or lath products consigned to one destination and invoiced to one account. Any mixture of metallized and regular patented board products (including special surfaced gypsum board products) may be combined to make up the required minimum. Exceptions: Refer to section (c) of paragraph (5) and section (a) of paragraph (6) for minimum prices of 1/2" T&G Sheathing into Queens and Nassau Counties and several towns in Suffolk County, New York, also of 5/16" plasterboard into Mercer County, New Jersey.

(9) 24" x 48" Cutstock Plasterboard. In states of Kansas, Missouri, Oklahoma, Arkansas, Mississippi and Alabama the minimum price is $17.50 per M sq. ft. for 1/4" and 3/8" thicknesses and $18.75 per M sq. ft. for 1/2" thickness, f.o.b. Plasterco, Va., Grand Rapids, Mich., Fort Dodge, Iowa, East Chicago, Indiana, Gypsum, Ohio, Southard, Oklahoma, Sweetwater, Texas and Acme, Texas.

9846 (10) 1/4" and 3/8" Cutstock Plasterboard. Minimum price for shipment to Niagara, Erie (including the town of Gowanda, New York) Monroe and Wayne Counties, N. Y. is $12.50 per M sq. ft. f.o.b. cars Oakfield, N. Y.

This price does not apply to 32" x 48" board.

(11) 32" x 48" Gypsum Board. In all areas 32" x 48" gypsum board is subject to the minimum wallboard price except:

(a) Where used for specific roof jobs it is subject to the minimum plasterboard price for such specific jobs.

(b) In all states east of the Mississippi River and in the states of Iowa, Minnesota, Missouri, Nebraska, Colorado, Kansas, Oklahoma, Arkansas and Louisiana, 32" x 48" board, if grey surfaced and round edged, is subject to minimum plasterboard price.

(c) In Henrico County, Virginia only, 32" x 48" cut-stock plasterboard is subject to minimum plasterboard price.

(12) 36" x 48" Gypsum Board. 36" x 48" is standard plasterboard size in all states for use on specific gypsum roof jobs only and is subject to minimum plasterboard price for such specific gypsum roof jobs.

(13) Delivered Carload Minimum Prices in Certain Suburbs Same as in City Proper, as Indicated Below:

Delivered Carload Minimum Prices in—	*Same as—*
College Park, Ga.	Atlanta, Ga.
Elkridge and Glen Burnie, Maryland	Baltimore, Md.
Bristol, Tenn.	Bristol, Va.
Cheviot & Bridgetown, O.	Cincinnati, O.
Euclid, North Randall & Bedford, O.	Cleveland, O.
Dodson and Edgecomb, Mo.; Rosedale, Waldo, Argentine, Westport, Overland Park and Kansas City, Kansas.	Kansas City, Mo.
Ferguson, Kinloch, Overland, Brentwood, Kirkwood, Jennings, Wellston, Clayton, Webster Groves, Maplewood, Gravois Station, Old Orchard and Lake Junction, Mo.	St. Louis, Mo.
Armory, Indian Orchard, Oak Street and Chicopee, Mass.	Springfield, Mass.
South Windham, Maine	Portland, Maine
Gabe, Sheppard and Wilmont, Okla.	Okla. City, Okla.
Arlington Siding (Poughkeepsie), N. Y.	Poughkeepsie, N. Y.
Rosslyn, Virginia	Washington, D. C.

9847 (14) Sales to Contractors and Prefabricated House Manufacturers, also Extras on Odd Sizes:

(a) On sales of standard sizes to contractors, roofing contractors, metal ceiling contractors and prefabricated house manufacturers, add differentials per M sq. ft. as follows. (Note: Sales to roofing contractors are for specific roof jobs only):

To Contractors (Incl. Metal Ceiling Contrs.) & to Prefabricated House Mfrs. Std. Sizes		To Roofing Contractors Std. Sizes	
W. Bd.	Pl. Bd.	W. Bd.	Pl. Bd.
2.50	1.25	1.25	1.25

(b) On sales of odd sizes to dealers, contractors, roofing contractors, metal ceiling contractors and prefabricated house manufacturers, add differentials per M sq. ft. as follows (Note: Sales to roofing contractors are for specific roof jobs only):

To Dealers Odd Sizes		To Contractors (Incl. Metal Ceiling Contrs.) & To Prefabricated House Mfrs. Odd Sizes		To Roofing Contractors Odd Sizes	
W. Bd.	Pl. Bd.	W. Bd.	Pl. Bd.	W. Bd.	Pl. Bd.
2.50	1.25	5.00	2.50	1.25	1.25

Yours very truly,

UNITED STATES GYPSUM COMPANY

———— ————, *Vice President.*

† Indicates change in this reissue.

9848 Stopover, Switching and Other Extra Delivery Charges:

All stopover charges, switching charges and other extra delivery charges, including full Emergency Increase applicable to such charges, will be paid by customers. Exception: Stopover charges need not be included on shipments into the states of Michigan, Wisconsin, Illinois, Indiana, Ohio, Kansas, Missouri, Arkansas, Oklahoma, Iowa, Minnesota, North Dakota, South Dakota, Texas, Nebraska, Kentucky, Montana, Colorado and Wyoming; also stopover charges need not be included on shipments to destinations within any Gypsum Board Trucking Area wherein the delivered price in pool or mixed carloads is same as delivered price when delivered by truck.

The above prices apply to the sale of all board embodying the claims of our patents in all markets except where an exception is made as hereinafter expressly stated:

(1) Until further notice the above minimum prices shall not apply to sales of patented gypsum wallboard and gypsum plasterboard products for shipment to or delivery in the following area: States of California, Arizona, Nevada, Utah, Idaho, Oregon and Washington, also that portion of State of Montana west of and including Phillips, Petroleum, Musselshell, Yellowstone and Carbon Counties.

(2) 1/4" Wallboard Exceptions:

(a) For shipment into states of Florida, New Mexico, Colorado and Wyoming, also that portion of Montana east of but not including Phillips, Petroleum, Musselshell, Yellowstone and Carbon Counties, minimum price of 1/4" patented gypsum wallboard is $20.00 per M sq. ft. f.o.b. Acme, Texas; Sweetwater, Texas; Southard, Oklahoma; Plasterco, Virginia; and Fort Dodge, Iowa.

(3) 3/8" Wallboard Exceptions:

†(a) For shipment into states of New Mexico, Colorado, Wyoming, North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, Texas, Arkansas, Louisiana, Mississippi, Tennessee, Alabama, Georgia, South Carolina, North Carolina and Florida, also into that portion of Montana east of but not including Phillips, Petroleum, Musselshell, Yellowstone and Carbon Counties also into Kansas City, Missouri, minimum price of 3/8" patented gypsum wallboard is $25.00 per M sq. ft. f.o.b. Acme, Texas; Sweetwater, Texas; Southard, Oklahoma; Fort Dodge, Iowa; Grand Rapids, Michigan; East Chicago, Indiana; Gypsum, Ohio; Plasterco, Virginia; and Philadelphia, Pennsylvania.

†(b) For shipment into states of Minnesota, Iowa and Missouri (except Kansas City—see paragraph (a) above) minimum price of 3/8" patented gypsum wallboard is $26.00 per M sq. ft. f.o.b. Fort Dodge, Iowa and Southard, Oklahoma; or $27.00 per M sq. ft. f.o.b. East Chicago, Indiana and Grand Rapids Michigan

(4) 1/2" Wallboard Exceptions:

† Indicates changes (to become effective August 8, 1936).

(a) For shipment into states of New Mexico, Oklahoma; Texas and Arkansas, also into Caddo, Bossier, De Soto, Red River, Bienville, Webster and Claiborne counties, Louisiana, minimum price of 1/2" patented gypsum wallboard is $26.00 per M sq. ft. f.o.b. Acme, Texas; Sweetwater, Texas; Southard, Oklahoma; and Fort Dodge, Iowa.

(b) For shipment into states of North Carolina, South Carolina, Georgia; Florida; Tennessee, Alabama, Mississippi, Louisiana (except counties listed in (a) above), Kansas, Nebraska, South Dakota, North Dakota, Colorado, Wyoming, and that portion of Montana east of but not including Phillips, Petroleum,

9849 (10) 1/4" and 3/8" Cutstock Plasterboard. Minimum price for shipment to Niagara, Erie (including the town of Gowanda, New York) Monroe and Wayne Counties, N. Y. is $12.50 per M sq. ft. f.o.b. cars Oakfield, N. Y.

This price does not apply to 32" x 48" board.

(11) 32" x 48" Gypsum Board. In all areas 32"x48" gypsum board is subject to the minimum wallboard price except:

(a) Where used for specific roof jobs it is subject to the minimum plasterboard price for such specific jobs.

(b) In all states east of the Mississippi River and in the states of Iowa, Minnesota, Missouri, Nebraska, Colorado, Kansas, Oklahoma, Arkansas and Louisiana, 32" x 48" board, if grey surfaced and round edged, is subject to minimum plasterboard price.

(c) In Henrico County, Virginia only, 32" x 48" cutstock plasterboard is subject to minimum plasterboard price.

(12) 36" x 48" Gypsum Board. 36" x 48" is standard plasterboard size in all states for use on specific gypsum roof jobs only and is subject to minimum plasterboard price for such specific gypsum roof jobs.

(13) Delivered Carload Minimum Prices in Markets as Listed Are Same as in Adjacent Cities, as Indicated Below:

Delivered Carload Minimum Prices in—	*Same as—*
College Park, Ga.	Atlanta, Ga.
Elkridge and Glen Burnie, Maryland	Baltimore, Md.
Bristol, Tenn.	Bristol, Va.
Cheviot & Bridgetown, O.	Cincinnati, O.
Euclid, North Randall & Bedford, O.	Cleveland, O.
Dodson and Edgecomb, Mo.; Rosedale, Waldo, Argentine, Westport, Overland Park and Kansas City, Kansas.	Kansas City, Mo.
Ferguson, Kinloch, Overland, Brentwood, Kirkwood, Jennings, Wellston, Clayton, Webster Groves, Maplewood, Gravois Station, Old Orchard and Lake Junction, Mo.	St. Louis, Mo.
Armory, Indian Orchard, Oak Street, and Chicopee, Mass.	Springfield, Mass.
South Windham, Maine	Portland, Maine
Gabe, Sheppard, and Wilmont, Okla.	Okla. City, Okla.
Arlington Siding (Poughkeepsie), N. Y.	Poughkeepsie, N. Y.
Rosslyn, Virginia	Washington, D. C.
†Omaha, Nebraska	Council Bluffs, Ia.
†Moline and Rock Island, Illinois	Davenport, Iowa

9850 Stopover, Switching and Other Extra Delivery Charges:

All stopover charges, switching charges and other extra delivery charges, including full Emergency Increase applicable to such charges, will be paid by customers. Exception: Stopover charges need not be included on shipments into the states of Michigan, Wisconsin, Illinois, Indiana, Ohio, Kansas, Missouri, Arkansas, Oklahoma, Iowa, Minnesota, North Dakota, South Dakota, Texas, Nebraska, Kentucky, Montana, Colorado and Wyoming; also stopover charges need not be included on shipments to destinations within any Gypsum Board Trucking Area wherein the delivered price in pool or mixed carloads is same as delivered price when delivered by truck.

The above prices apply to the sale of all board embodying the claims of our patents in all markets except where an exception is made as hereinafter expressly stated:

(1) Until further notice the above minimum prices shall not apply to sales of patented gypsum wallboard and gypsum plasterboard products for shipment to or delivery in the following area: States of California, Arizona, Nevada,

† Indicates changes (to become effective August 8, 1936).

Utah, Idaho, Oregon and Washington, also that portion of State of Montana west of and including Phillips, Petroleum, Musselshell, Yellowstone and Carbon Counties.

(2) 1/4" Wallboard Exceptions:

(a) For shipment into states of Florida, New Mexico, Colorado and Wyoming; also that portion of Montana east of but not including Phillips, Petroleum, Musselshell, Yellowstone and Carbon Counties, minimum price of 1/4" patented gypsum wallboard is $20.00 per M sq. ft. f.o.b. Acme, Texas; Sweetwater, Texas; Southard, Oklahoma; Plasterco, Virginia; and Fort Dodge, Iowa.

(3) 3/8" Wallboard Exceptions:

†(a) For shipment into states of New Mexico, Colorado, Wyoming, North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, Texas, Arkansas, Louisiana, Mississippi, Tennessee, Alabama, Georgia, South Carolina, North Carolina and Florida, also into that portion of Montana east of but not including Phillips, Petroleum, Musselshell, Yellowstone and Carbon Counties, minimum price of 3/8" patented gypsum wallboard is $25.00 per M sq. ft. f.o.b. Acme, Texas; Sweetwater, Texas; Southard, Oklahoma, Fort Dodge, Iowa; Grand Rapids, Michigan; East Chicago, Indiana; Gypsum, Ohio; Plasterco, Virginia and Philadelphia Pennsylvania.

†(b) For shipment into states of Minnesota, Iowa and Missouri minimum price of 3/8" patented gypsum wallboard is $25.00 per M sq. ft. f.o.b. Fort Dodge, Iowa and Southard, Oklahoma; or $27.00 per M sq. ft. f.o.b. East Chicago, Indiana and Grand Rapids, Michigan.

†(c) For shipment into Logan, Mingo, Wyoming, McDowell, Raleigh, Mercer, Summers and Fayette Counties, West Virginia, also into that portion of Virginia west of and including Highland, Augusta, Nelson, Amherst, Campbell and Halifax Counties, minimum price of 3/8" patented gypsum wallboard is $25.00 per M sq. ft. f.o.b. Plasterco, Virginia; or $27.00 per M sq. ft. f.o.b. Gypsum, Ohio.

†(4) 1/2" Wallboard Exceptions:

(a) For shipment into states of North Carolina, South Carolina, Georgia, Florida, Tennessee, Alabama, Mississippi, Louisiana, Texas, New Mexico, Oklahoma, Arkansas,

† Indicates changes (to become effective August 17, 1936).

Kansas, Nebraska, South Dakota, North Dakota, Colorado, Wyoming, and that portion of Montana east of but not including Phillips, Petroleum, Musselshell, Yellowstone and Carbon counties, minimum price of 1/2" patented gypsum wallboard is $26.00 per M sq. ft. f.o.b. Plaste co, Virginia; Philadelphia, Pennsylvania; Gypsum, Ohio; East 9851 Chicago, Indiana; Grand Rapids, Michigan; Fort Dodge, Iowa; Southard, Oklahoma; Sweetwater, Texas and Acme, Texas.

†(b) For shipment into states of Minnesota, Iowa and Missouri, minimum price of 1/2" patented gypsum wallboard is $26.00 per M sq. ft. f.o.b. Fort Dodge, Iowa and Southard, Oklahoma; or $29.00 per M sq. ft. f.o.b. East Chicago, Indiana and Grand Rapids, Michigan.

†(c) For shipment into Logan, Mingo, Wyoming, McDowell, Raleigh, Mercer, Summers and Fayette Counties, West Virginia, also into that portion of Virginia west of and including Highland, Augusta, Nelson, Amherst, Campbell and Halifax Counties, minimum price of 1/2" patented gypsum wallboard is $26.00 per M sq. ft. f.o.b. Plasterco, Virginia; or $29.00 per M sq. ft. f.o.b. Gypsum, Ohio.

(5) 1/2" T&G Sheathing Exceptions:

(a) For shipment into Lake and McHenry counties, Illinois, also Porter county, Indiana in straight and pool carloads or in mixed carloads with other gypsum products, the minimum price of 1/2" patented gypsum sheathing is $17.66 per M sq. ft. f.o.b. cars delivered to dealers' warehouse or siding.

(b) For shipment into Allegheny County (Pittsburgh) Pennsylvania in straight and pool carloads or in mixed carloads with other gypsum products, the minimum price of 1/2" patented gypsum sheathing is $21.42 per M sq. ft. f.o.b. cars delivered to dealers' warehouse or siding.

(c) For shipment into Queens and Nassau counties, New York, also towns of Amityville, Huntington, Northport, Babylon, Lindenhurst, Bayshore and Cold Springs Harbor in Suffolk County, New York, the minimum price of 1/2" patented gypsum sheathing is $19.00 per M sq. ft. for shipment in straight carloads of patented gypsum board products consigned to one destination and invoiced to one account or $20.00 per M sq. ft. for shipment in pool cars or

† Indicates changes (to become effective August 17, 1936).

mixed cars, f.o.b. cars delivered to dealers' warehouse or siding.

(d) For shipment into Erie and Niagara counties, New York, the minimum price of 1/2" patented gypsum sheathing is $15.00 per M sq. ft. f.o.b. Oakfield, New York.

(6) 5/16" Plasterboard. The minimum price of 5/16" patented gypsum plasterboard (weight 1175# per M), in straight and pool carloads, or in mixed carloads with other gypsum products, for shipment into following markets only, is as follows:

†(a) $15.00 per M sq. ft. f.o.b. cars delivered to dealers' warehouse or siding in the following markets:

—Cuyahoga County (Cleveland) and towns of Willoughby and Wickliffe, Ohio
—Dauphin County, Pennsylvania (Harrisburg)
—Douglas County, Nebraska (Omaha)
—Franklin County, Massachusetts (Greenfield)
—Franklin County, Ohio (Columbus)
—Hampden County, Massachusetts (Springfield)
—Hampshire County, Massachusetts (Northampton)
—Hanover County, Virginia
—Hartford County, Connecticut (Hartford)
—Hennepin County, Minnesota (Minneapolis)
—Henrico County, Virginia (Richmond)
—Kent County, Rhode Island
9852 —Lancaster County, Pennsylvania (Lancaster)
†—Lackawanna County, Pennsylvania (Scranton)
†—Luzerne County, Pennsylvania (Wilkes-Barre)
—Marion County, Indiana (Indianapolis)
—Mercer County, New Jersey (Trenton) See paragraph (8) for minimum quantity required for shipment in pool cars or mixed cars.
—Norfolk County, Virginia (Norfolk)
—Oklahoma County, Oklahoma (Oklahoma City)
—Peoria County, Illinois (Peoria)
—Pottawatomie County, Iowa (Council Bluffs)
—Princess Anne County, Virginia
—Providence County, Rhode Island (Providence)
—Ramsey County, Minnesota (St. Paul)
—Roanoke County, Virginia (Roanoke)

† Indicates changes (to become effective August 17, 1936).

—Sangamon County, Illinois (Springfield)
—Tulsa County, Oklahoma (Tulsa)
—Woodbury County, Iowa (Sioux City)

also following towns in Missouri: St. Louis, Ferguson, Kinloch, Overland, Brentwood, Kirkwood, Jennings, Wellston, Clayton, Webster Groves, Maplewood, Gravois Station, Old Orchard and Lake Junction.

†(b) $16.00 per M sq. ft. f.o.b. cars delivered to dealers' warehouse or siding in the following markets:

—Broward County, Florida
—Buchanan County, Missouri (St. Joseph)
—Cass County, North Dakota (Fargo)
—Dade County, Florida (Miami)
—DeKalb County, Georgia
—Fulton County, Georgia (Atlanta)
—Greene County, Missouri (Springfield)
—Jasper County, Missouri (Joplin)
—Lancaster County, Nebraska (Lincoln)
—Minnehaha County, South Dakota (Sioux Falls)
—Monroe County, Florida
—Newton County, Missouri (Joplin)
—Palm Beach County, Florida
—Sedgewick County, Kansas (Wichita)
†—Shawnee County, Kansas (Topeka)
†—Shelby County, Tennessee (Memphis)

also towns of Kansas City, Dodson and Edgecomb, Missouri, and Rosedale, Waldo, Argentine, Westport, Overland Park and Kansas City, Kansas.

†(c) $16.25 per M sq. ft. f.o.b. cars delivered to dealers' warehouse or siding in Jefferson County, Alabama (Birmingham).

†(d) $17.00 per M sq. ft. f.o.b. cars delivered to dealers' warehouse or siding in Duval County, Florida (Jacksonville).

†(e) $17.50 per M sq. ft. f.o.b. cars delivered to dealers' warehouse or siding in Orleans County, Louisiana (New Orleans).

(7) 3/8" Plasterboard Exceptions:

(a) The minimum price of 3/8" patented gypsum plasterboard, in straight and pool carloads, or in mixed carloads with other gypsum products is $21.87 per M sq. ft. f.o.b.

† Indicates changes (to become effective August 17, 1936).

cars delivered to dealers warehouse or siding in Palm Beach, Dade, Broward and Monroe Counties, Florida

9853 —Lancaster County, Pennsylvania (Lancaster)
—Lackawanna County, Pennsylvania (Scranton)
—Luzerne County, Pennsylvania (Wilkes-Barre)
—Marion County, Indiana (Indianapolis)
—Mercer County, New Jersey (Trenton) See paragraph (8) for minimum quantity required for shipment in pool cars or mixed cars.
—Norfolk County, Virginia (Norfolk)
—Oklahoma County, Oklahoma (Oklahoma City)
—Peoria County, Illinois (Peoria)
—Pottawatomie County, Iowa (Council Bluffs)
—Princess Anne County, Virginia
—Providence County, Rhode Island (Providence)
—Ramsey County, Minnesota (St. Paul)
—Roanoke County, Virginia (Roanoke)
—Sangamon County, Illinois (Springfield)
—Tulsa County, Oklahoma (Tulsa)
—Woodbury County, Iowa (Sioux City)

also following towns in Missouri: St. Louis, Ferguson, Kinloch, Overland, Brentwood, Kirkwood, Jennings, Wellston, Clayton, Webster Groves, Maplewood, Gravois Station, Old Orchard and Lake Junction.

(b) $16.00 per M sq. ft. f.o.b. cars delivered to dealers' warehouse or siding in the following markets:
—Broward County, Florida
—Buchanan County, Missouri (St. Joseph)
—Cass County, North Dakota (Fargo)
—Dade County, Florida (Miami).
—DeKalb County, Georgia
—Fulton County, Georgia (Atlanta)
—Greene County, Missouri (Springfield)
—Jasper County, Missouri (Joplin)
—Lancaster County, Nebraska (Lincoln)
—Minnehaha County, South Dakota (Sioux Falls)
—Monroe County, Florida
—Newton County, Missouri (Joplin)
—Palm Beach County, Florida
—Sedgewick County, Kansas (Wichita)
—Shawnee County, Kansas (Topeka)

also towns of Kansas City, Dodson and Edgecomb, Missouri, and Rosedale, Waldo, Argentine, Westport, Overland

Park and Kansas City, Kansas; also that portion of Kentucky west of and including Marshall and Calloway Counties and that portion of Tennessee west of and including Henry, Benton, Decatur and Hardin Counties.

(c) $16.25 per M sq. ft. f.o.b. cars delivered to dealers' warehouse or siding in Jefferson County, Alabama (Birmingham).

(d) $17.00 per M sq. ft. f.o.b. cars delivered to dealers' warehouse or siding in Duval County, Florida (Jacksonville).

(e) $17.50 per M sq. ft. f.o.b. cars delivered to dealers' warehouse or siding in Orleans County, Louisiana (New Orleans).

(7) 3/8" Plasterboard Exceptions:

(a) The minimum price of 3/8" patented gypsum plasterboard, in straight and pool carloads, or in mixed carloads with other gypsum products is $21.87 per M sq. ft. f.o.b. cars delivered to dealers warehouse or siding in Palm Beach, Dade, Broward and Monroe Counties, Flor-
9854 ida.

—Lancaster County, Pennsylvania (Lancaster)
—Lackawanna County, Pennsylvania (Scranton)
—Luzerne County, Pennsylvania (Wilkes-Barre)
—Marion County, Indiana (Indianapolis)
—Mercer County, New Jersey (Trenton) see paragraph (8) for minimum quantity required for shipment in pool cars or mixed cars.

—Norfolk County, Virginia (Norfolk)
—Oklahoma County, Oklahoma (Oklahoma City)
—Peoria County, Illinois (Peoria)
—Pottawatomie County, Iowa (Council Bluffs)
—Princess Anne County, Virginia
—Providence County, Rhode Island (Providence)
—Ramsey County, Minnesota (St. Paul)
—Roanoke County, Virginia (Roanoke)
—Sangamon County, Illinois (Springfield)
—Tulsa County, Oklahoma (Tulsa)
—Woodbury County, Iowa (Sioux City)

†also the St. Louis Area as follows: the City of St. Louis, Missouri; all of Saint Louis County, Missouri; and the town of Imperial (in Jefferson County), Missouri.

† Indicates change (to become effective August 24, 1936).

(b) $16.00 per M sq. ft. f.o.b. cars delivered to dealers' warehouse or siding in the following markets:

—Broward County, Florida
—Buchanan County, Missouri (St. Joseph)
—Cass County, North Dakota (Fargo)
—Dade County, Florida (Miami)
—DeKalb County, Georgia
—Fulton County, Georgia (Atlanta)
—Greene County, Missouri (Springfield)
—Jasper County, Missouri (Joplin)
—Lancaster County, Nebraska (Lincoln)
—Minnehaha County, South Dakota (Sioux Falls)
—Monroe County, Florida
—Newton County, Missouri (Joplin)
—Palm Beach County, Florida
—Sedgewick County, Kansas (Wichita)
—Shawnee County, Kansas (Topeka)

also towns of Kansas City, Dodson and Edgecomb, Missouri, and Rosedale, Waldo, Argentine, Westport, Overland Park and Kansas City, Kansas; also that portion of Kentucky west of and including Marshall and Calloway Counties and that portion of Tennessee west of and including Henry, Benton, Decatur and Hardin Counties.

(c) $16.25 per M sq. ft. f.o.b. cars delivered to dealers' warehouse or siding in Jefferson County, Alabama (Birmingham).

(d) $17.00 per M sq. ft. f.o.b. cars delivered to dealers' warehouse or siding in Duval County, Florida (Jacksonville).

(e) $17.50 per M sq. ft. f.o.b. cars delivered to dealers' warehouse or siding in Orleans County, Louisiana (New Orleans).

(7) 3/8" Plasterboard Exceptions:

(a) The minimum price of 3/8" patented gypsum plasterboard, in straight and pool carloads, or in mixed carloads with other gypsum products is $21.87 per M sq. ft. f.o.b. cars delivered to dealers warehouse or siding in Palm Beach, Dade, Broward and Monroe Counties, Flor-
9855 ida.

(10) 1/4" and 3/8" Cutstock Plasterboard. Minimum price for shipment to Niagara, Erie (including the town of Gowanda, New York) Monroe and Wayne

† Indicates change (to become effective August 25, 1936).

Counties, N. Y. is $12.50 per M sq. ft. f.o.b. cars Oakfield, N. Y.

This price does not apply to 32" x 48" board.

(11) 32" x 49" Gypsum Board. In all areas 32" x 48" gypsum board is subject to the minimum wallboard price except:

(a) Where used for specific roof jobs it is subject to the minimum plasterboard price for such specific jobs.

(b) In all states east of the Mississippi River and in the states of Iowa, Minnesota, Missouri, Nebraska, Colorado, Kansas, Oklahoma, Arkansas and Louisiana, 32" x 48" board, if grey surfaced and round edged, is subject to minimum plasterboard price.

(c) In Henrico County, Virginia only, 32" x 48" cutstock plasterboard is subject to minimum plasterboard price.

(12) 36" x 48" Gypsum Board. 36" x 48" is standard plasterboard size in all states for use on specific gypsum roof jobs only and is subject to minimum plasterboard price for such specific gypsum roof jobs.

(13) Delivered Carload Minimum Prices in Markets as Listed Are Same as in Adjacent Cities, as Indicated Below:

Delivered Carload Minimum Prices in—	*Same as—*
College Park, Ga.	Atlanta, Ga.
Elkridge and Glen Burnie, Maryland	Baltimore, Md.
Bristol, Tenn.	Bristol, Va.
Cheviot & Bridgetown, O.	Cincinnati, O.
Euclid, North Randall & Bedford, O.	Cleveland, O.
Dodson and Edgecomb, Mo.; Rosedale, Waldo, Argentine, Westport, Overland Park and Kansas City, Kansas.	Kansas City, Mo.
†Saint Louis County and town of Imperial (in Jefferson County), Missouri	St. Louis, Mo.
Armory, Indian Orchard, Oak Street, and Chicopee, Mass.	Springfield, Mass.
South Windham, Maine	Portland, Maine
Gabe, Sheppard, and Wilmont, Okla.	Okla. City, Okla.
Arlington Siding (Poughkeepsie), N. Y.	Poughkeepsie, N. Y.
Rosslyn, Virginia	Washington, D. C.
Omaha, Nebraska	Council Bluffs, Ia.
Moline and Rock Island, Illinois	Davenport, Iowa

† Indicates changes (to become effective August 25, 1936).

9856 UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

SEPTEMBER 11, 1936

Carload Shipments

Board License Bulletin No. 1 (Page 1)—Cancels Page 1
Dated July 23, 1936

This Reissue Cancels All Supplements to Board License Bulletin No. 1 Dated July 23, 1936

DEAR SIRS: Referring to our license contract with you, you are hereby notified that effective September 15, 1936 the minimum prices at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent); including Haggerty patent number 1,500,452 and Hite patent number 1,230,297, are as follows:

Patented gypsum wallboard and plasterboard products shall be quoted and sold on a delivered basis, f.o.b. cars destination. Delivered price is lowest combination of mill price plus freight, including emergency freight charge (see page 2) from that mill to destination (See Note # page 2). In stopover cars delivered price for any part of car is carload delivered price as above defined to point of delivery of that part of car. In every case rates as shown in published railroad freight tariffs apply. To determine board footage required to meet straight or mixed carload minimum weights, as shown in published railroad freight tariffs, use weights per M sq. ft. as shown below:

Dealer Prices f.o.b. cars: (Applying for standard sizes as listed in Bulletin No. 4)	1/4" Gypsum Wallboard (Wt. 950 # per M)†	5/16" Gypsum Wallboard (Wt. 1175 # per M) See Note *	3/8" Gypsum Wallboard (Wt. 1400 # per M)†	1/2" Gypsum Wallboard (Wt. 1900 # per M)†	1/2" Gypsum Sheathing (Wt. 1900 # per M)	3/4" Gypsum Wallboard (Wt. 3300 # per M)	3/8" Tiled Gypsum Wallboard (Wt. 1400 # per M)	1/4" Gypsum Plasterboard (Wt. 950 # per M)	3/8" Gypsum Plasterboard (Wt. 1400 # per M)	1/2" Gypsum Plasterboard (Wt. 1900 # per M)	3/4" Gypsum Plasterboard (Wt. 3300 # per M)
†Acme, Texas	20.00	— —	25.00	26.00	22.00	— —	50.00	15.00	15.00	16.25	— —
†Boston (Charlestown) Mass.	20.00	— —	25.00	26.00	22.00	— —	50.00	15.00	15.00	16.25	— —
†Detroit, Mich.	20.00	— —	25.00	26.00	22.00	— —	50.00	15.00	15.00	16.25	— —
†East Chicago, Ind.	20.00	— —	25.00	26.00	22.00	36.50	50.00	15.00	15.00	16.25	20.00
†Fort Dodge, Iowa	20.00	— —	25.00	26.00	22.00	— —	50.00	15.00	15.00	16.25	— —
†Grand Rapids, Mich.	20.00	24.00	25.00	26.00	22.00	36.50	50.00	15.00	15.00	16.25	20.00
†Gypsum, Ohio	24.25	— —	31.25	— —	— —	— —	56.25	— —	21.25	— —	— —
Laramie, Wyo.	24.00	— —	31.00	— —	— —	— —	56.00	— —	21.00	— —	— —
Loveland, Colo.	20.00	— —	25.00	26.00	22.00	— —	50.00	15.00	15.00	16.25	— —
†N. Brighton, S. I., N. Y.	20.00	24.00	25.00	26.00	22.00	36.50	50.00	15.00	15.00	16.25	20.00
†Oakfield, N. Y.	20.00	— —	25.00	26.00	22.00	— —	50.00	15.00	15.00	16.25	— —
†Philadelphia, Pa.	20.00	— —	25.00	26.00	22.00	— —	50.00	15.00	15.00	16.25	— —
†Plasterco, Va.	20.00	— —	25.00	26.00	22.00	36.50	50.00	15.00	15.00	16.25	20.00
†Southard, Okla.	20.00	— —	25.00	26.00	22.00	— —	50.00	15.00	15.00	16.25	— —
†Sweetwater, Texas											

* 5/16" Gypsum Wallboard is for sale to manufacturers only, for fabrication at their factories—not a dealer item.



9857 #Where an odd 'rate per ton' is in effect (example: $3.45 per ton) the freight per M sq. ft. shall be figured on basis of rate per cwt. nearest to rate per ton, fractions of less than ¼¢ per cwt. to be dropped, fractions of ¼¢ per cwt. to ½¢ per cwt. to be considered as ½¢. Example: The rate of $3.45 per ton equals 17¼¢ per cwt. For purpose of arriving at delivered price, however, the rate of 17½¢ shall be used.

Emergency Freight Charges: The minimum delivered prices of patented gypsum wallboard and gypsum plasterboard are directly affected by the permissive order of the Interstate Commerce Commission authorizing an increase in freight rates. On Interstate traffic the freight increase becomes effective on the effective date of the Interstate tariff, and in Intrastate traffic the freight increase is effective when approved by the State Commission.

When emergency freight charges become effective the minimum delivered price of patented gypsum wallboard and gypsum plasterboard is to be the lowest combination of mill price plus freight, including emergency charge, from that mill to destination, as follows:

Where the minimum delivered price is the result of mill price plus Interstate freight, the increase is to be added on the effective date of the Interstate tariff.

Where the minimum delivered price is the result of mill price plus Intrastate freight, the increase is effective when approved by the State Commission.

The amount of increase in freight to be added to minimum f. o. b. mill prices of patented gypsum wallboard and gypsum plasterboard shall be as detailed in following schedule:

Opposite old rate, using the table below, is the proper new pricing rate, including emergency freight charge, in cents per 100 pounds:

Old rate	New rate	Old rate	New rate	Old rate	New rate
.05	.05	.18	.19	.31	.33
.055	.06	.185	.20	.315	.34
.06	.06	.19	.20	.32	.34
.065	.07	.195	.21	.325	.35
.07	.07	.20	.21	.33	.35
.075	.08	.205	.22	.335	.36
.08	.09	.21	.22	.34	.36
.085	.09	.215	.23	.345	.37
.09	.10	.22	.24	.35	.37
.095	.10	.225	.24	.355	.38
.10	.11	.23	.25	.36	.39
.105	.11	.235	.25	.365	.39
.11	.12	.24	.26	.37	.40
.115	.12	.245	.26	.375	.40
.12	.13	.25	.27	.38	.41
.125	.13	.255	.27	.385	.41
.13	.14	.26	.28	.39	.42
.135	.14	.265	.28	.395	.42
.14	.15	.27	.29	.40	.43
.145	.16	.275	.29	.405	.43
.15	.16	.28	.30	.41	.44
.155	.17	.285	.30	.415	.44
.16	.17	.29	.31	.42	.45
.165	.18	.295	.32	.425	.45
.17	.18	.30	.32	.43	.46
.175	.19	.305	.33		

On all old rates over 43¢ per cwt. to secure new rate add flat 3¢ per cwt. (.435 becomes .465, .44 becomes .47, etc.)

9858 Stopover, Switching and Other Extra Delivery Charges:

All stopover charges, switching charges and other extra delivery charges, including full Emergency Increase applicable to such charges, will be paid by customers. Exception: Stopover charges need not be included on shipments into the states of Michigan, Wisconsin, Illinois, Indiana, Ohio, Kansas, Missouri, Arkansas, Oklahoma, Iowa, Minnesota, North Dakota, South Dakota, Texas, Nebraska, Kentucky, Montana, Colorado and Wyoming; also stopover charges need not be included on shipments to destinations within the following Gypsum Board Del'd Price Areas: Metro New York-New Jersey, Philadelphia, Boston, Southeast New York, Southern New Jersey Areas; Lehigh and Northampton Counties, Pennsylvania and New Castle County, Delaware, also Detroit, Michigan Area. (Refer to pages 5 and 6 for descriptions of areas).

The above prices apply to the sale of all board embodying the claims of our patents in all markets except where an exception is made as hereinafter expressly stated:

(1) Until further notice the above minimum prices shall not apply to sales of patented gypsum wallboard and gyp-

sum plasterboard products for shipment to or delivery in the following area: States of California, Arizona, Nevada, Utah, Idaho, Oregon and Washington, also that portion of State of Montana west of and including Phillips, Petroleum, Musselshell, Yellowstone and Carbon Counties.

(2) 1/2" T&G Sheathing Exceptions:

(a) For shipment into Lake and McHenry counties, Illinois, also Porter County, Indiana in straight and pool carloads or in mixed carloads with other gypsum products, the minimum price of 1/2" patented gypsum sheathing is $17.66 per M sq. ft. f.o.b. cars delivered to dealers' warehouse or siding.

(b) For shipment into Allegheny County (Pittsburgh) Pennsylvania in straight and pool carloads or in mixed carloads with other gypsum products, the minimum price of 1/2" patented gypsum sheathing is $21.42 per M sq. ft. f.o.b. cars delivered to dealers' warehouse or siding.

(c) For shipment into Queens and Nassau counties, New York, also towns of Amityville, Huntington, Northport, Babylon, Lindenhurst, Bayshore and Cold Springs Harbor in Suffolk County, New York, the minimum price of 1/2" patented gypsum sheathing is $19.00 per M sq. ft. for shipment in straight carloads of patented gypsum products consigned to one destination and invoiced to one account, or $20.00 per M sq. ft. for shipment in pool cars or mixed cars, f.o.b. cars delivered to dealers' warehouse or siding.

(d) For shipment into Erie and Niagara counties, New York, the minimum price of 1/2" patented gypsum sheathing is $15.00 per M sq. ft. f.o.b. Oakfield, New York.

9859 (3) 5/16" Plasterboard. The minimum price of 5/16" patented gypsum plasterboard (weight 1175# per M), in straight and pool carloads, or in mixed carloads with other gypsum products, for shipment into following areas only, is as follows:

(a) $12.75 per M sq. ft. F.O.B. Fort Dodge, Iowa, East Chicago, Indiana, and Grand Rapids, Michigan for shipment into State of Minnesota.

(b) $15.00 per M sq. ft. f.o.b. cars delivered to dealers' warehouse or siding in the following markets:

—Cuyahoga County (Cleveland) and towns of Willoughby and Wickliffe, Ohio.
—Dauphin County, Pennsylvania (Harrisburg)
—Douglas County, Nebraska (Omaha)
—Franklin County, Massachusetts (Greenfield)
—Franklin County, Ohio (Columbus)
—Hampden County, Massachusetts (Springfield)
—Hampshire County, Massachusetts (Northampton)
—Hanover County, Virginia
—Hartford County, Connecticut (Hartford)
—Henrico County, Virginia (Richmond)
—Kent County, Rhode Island
—Lancaster County, Pennsylvania (Lancaster)
—Lackawanna County, Pennsylvania (Scranton)
—Luzerne County, Pennsylvania (Wilkes-Barre)
—Marion County, Indiana (Indianapolis)
—Mercer County, New Jersey (Trenton—see paragraph (5) for minimum quantity required for shipment in pool cars or mixed cars.)
—Norfolk County, Virginia (Norfolk)
—Oklahoma County, Oklahoma (Oklahoma City)
—Peoria County, Illinois (Peoria)
—Pottawatomie County, Iowa (Council Bluffs)
—Princess Anne County, Virginia
—Providence County, Rhode Island (Providence)
—Roanoke County, Virginia (Roanoke)
—Sangamon County, Illinois (Springfield)
—Tulsa County, Oklahoma (Tulsa)
—Woodbury County, Iowa (Sioux City)

also the St. Louis Area as follows: the City of St. Louis, Missouri; all of Saint Louis County, Missouri; and the town of Imperial (in Jefferson County), Missouri.

(c) $16.00 per M sq. ft. f.o.b. cars delivered to dealers' warehouse or siding in the following markets:

—Broward County, Florida
—Buchanan County, Missouri (St. Joseph)
—Cass County, North Dakota (Fargo)
—Dade County, Florida (Miami)
—DeKalb County, Georgia
—Fulton County, Georgia (Atlanta)
—Greene County, Missouri (Springfield)
—Jasper County, Missouri (Joplin)
9860 —Lancaster County, Nebraska (Lincoln)
—Minnehaha County, South Dakota (Sioux Falls)
—Monroe County, Florida

—Newton County, Missouri (Joplin)
—Palm Beach County, Florida
—Sedgewick County, Kansas (Wichita)
—Shawnee County, Kansas (Topeka)

also towns of Kansas City, Dodson and Edgecomb, Missouri, and Rosedale, Waldo, Argentine, Westport, Overland Park and Kansas City, Kansas; also that portion of Kentucky west of and including Marshall and Calloway Counties and that portion of Tennessee west of and including Henry, Benton, Decatur and Hardin Counties.

(d) $16.25 per M sq. ft. f.o.b. cars delivered to dealers' warehouse or siding in Jefferson County, Alabama (Birmingham).

(e) $17.00 per M sq. ft. f.o.b. cars delivered to dealers' warehouse or siding in Duval County, Florida (Jacksonville).

(f) $17.50 per M sq. ft. f.o.b. cars delivered to dealers' warehouse or siding in Orleans County, Louisiana (New Orleans).

(4) 3/8" Plasterboard Exceptions:

(a) The minimum price of 3/8" patented gypsum plasterboard, in straight and pool carloads, or in mixed carloads with other gypsum products is $21.87 per M sq. ft. f.o.b. cars delivered to dealers warehouse or siding in Palm Beach, Dade, Broward and Monroe Counties, Florida.

(b) The minimum price of 3/8" patented gypsum plasterboard, in straight and pool carloads, or in mixed carloads with other gypsum products is $15.00 per M sq. ft. f.o.b. cars delivered to dealers warehouse or siding in Niagara, Erie (including town of Gowanda, N. Y.) Monroe and Wayne Counties, New York.

(5) Delivered Price Areas

Prices of patented gypsum board products, in straight and pool cars or in mixed cars with other gypsum products, f.o.b. cars delivered to dealers warehouse or siding within areas listed below are as follows:

9861 Del'd. Prices Into: (See Descriptions of Areas Below)		1/4" Gypsum Wallboard†	3/8" Gypsum Wallboard†	1/2" Gypsum Wallboard†	1/2" Gypsum Sheathing	3/8" Tiled Gypsum Wallboard	1/4" Gypsum Lath	3/8" Gypsum Lath	1/2" Gypsum Lath
†Metro N. Y.—N. J., Boston and Philadelphia Areas	Straight Cars	20.00	25.00	26.00	22.00	50.00	15.00	15.00	16.25
†(See Notes b & c) Southeast New York & Southern New Jersey	Pool or Mxd. Cars	21.00	26.00	27.00	23.00	51.00	16.00	16.00	17.25
†Areas, Also Lehigh and Northampton Counties, Penna. and New Castle County, Del.	Straight, Pool or Mxd. Cars	21.00	26.00	27.00	23.00	51.00	16.00	16.00	17.25
†Chicago Area	Straight, Pool or Mxd. Cars	20.50	25.50	26.50	17.66	50.50	15.50	15.50	16.75
†Detroit Area Grand Rapids	Straight, Pool or Mxd. Cars	20.60	25.60	26.60	20.47	50.60	15.60	15.00	16.85
†Switching Area	Straight, Pool or Mxd. Cars	21.00	26.00	27.00	23.00	51.00	16.00	16.00	17.25

Notes and Exceptions Applying to Delivered Price Areas Listed Above:

(a) Descriptions of Areas:

Metro New York-New Jersey Area: Manhattan, Bronx, Kings, Queens, Richmond, Westchester, Rockland, Nassau and Suffolk Counties, N. Y., also Hudson, Essex, Union, Bergen, Passaic, Morris, Middlesex, Mercer, Somerset, Monmouth, Hunterdon, Warren, Sussex and Ocean Counties, New Jersey.

Philadelphia Area: Bucks, Montgomery, Chester, Delaware and Philadelphia Counties, Pennsylvania and Camden County, New Jersey.

Boston Area: Essex, Middlesex, Suffolk, Norfolk and Worcester counties, Mass., the town of Mansfield, Mass., that portion of Plymouth County lying north of the continuation of the southern boundary of Norfolk County, Mass.; Rockingham and Strafford Counties, New Hampshire; York and Cumberland Counties, Maine.

Southeast New York Area: Orange, Ulster, Sullivan, Putnam and Dutchess Counties, New York.

Southern New Jersey Area: Atlantic, Cape May, Gloucester, Salem, Cumberland and Burlington Counties, New Jersey.

Chicago Area: Cook and DuPage Counties, Illinois, Lake County, Indiana and following towns in Lake County, Illinois: Deerfield, Highland Park and Lake Forest.

Detroit Area: Wayne County, Michigan; towns of Birmingham, Clawson, Farmington, Ferndale and Royal Oak in Oakland County, Michigan; and towns of Warren,
9862 Halfway, Fraser, Roseville, Saint Clair Shores and Centerline in Macomb County, Michigan.

Grand Rapids, Mich. Switching Area: As described in published railroad freight tariffs.

(b) Delivered prices for shipment in straight cars into Metro New York-New Jersey, Philadelphia and Boston Areas apply on straight carloads of patented gypsum board products consigned to one destination and invoiced to one account. Any mixture of regular patented board products (including special surfaced gypsum board products) and metallized patented board products may be combined to make up the required minimum. Exceptions: Refer to section (c) of paragraph (2) and section (b) of paragraph (3) for minimum prices of 1/2". T&G Sheathing into Queens and Nassau Counties and several towns in Suffolk County, New York, also of 5/16" plasterboard into Mercer County, New Jersey.

Where any licensee or any of its employees, salesmen or executives has knowledge or notice, either directly or indirectly, that orders for less than straight car quantities of patented gypsum board products to be shipped into the above defined areas have been pooled for the purpose of or for effect of obtaining the reduced price for straight cars for each participant in the pool, licensor shall regard such sale as made at a price less than the minimum price fixed by the licensor and a violation of the terms of the license agreement.

(c) In pool cars or mixed cars into the Metro New York-New Jersey area, Philadelphia area and the Boston area as described above, minimum quantity is 5000 sq. ft. of patented gypsum board and/or lath products consigned to one destination and invoiced to one account. Any mixture of metallized and regular patented products (including special surfaced gypsum board products) may be combined to make up the required minimum. Exceptions: Re-

fer to section (c) of paragraph (2) and section (b) of paragraph (3) for minimum prices of 1/2" T&G Sheathing into Queens and Nassau Counties and several towns in Suffolk County, New York, also of 5/16" plasterboard into Mercer County, New Jersey.

(6) 24" x 48" Cutstock Plasterboard. In states of Kansas, Missouri, Oklahoma, Arkansas, Mississippi and Alabama the minimum price is $17.50 per M sq. ft. for 1/4" and 3/8" thickness and $18.75 per M sq. ft. for 1/2" thickness, f.o.b. Plasterco, Va., Grand Rapids, Mich., Fort Dodge, Iowa, East Chicago, Indiana, Gypsum, Ohio, Southard, Oklahoma, Sweetwater, Texas and Acme, Texas.

(7) 1/4" and 3/8" Cutstock Plasterboard—The minimum price of 1/4" and 3/8" patented open edge (cutstock) gypsum plasterboard, in straight and pool carloads, or in mixed carloads with other gypsum products is $15.00 per M sq. ft. f.o.b. cars delivered to dealers' warehouse or siding in Niagara, Erie (including town of Gowanda, N. Y.) Monroe and Wayne Counties, N. Y.

This price does not apply to 32" x 48" board.

(8) 32" x 48" Gypsum Board. In all areas 32" x 48" gypsum board is subject to the minimum wallboard price except:

9863 (a) Where used for specific roof jobs it is subject to the minimum plasterboard price for such specific jobs.

(b) In all states east of the Mississippi River and in the states of Iowa, Minnesota, Missouri, Nebraska, Colorado, Kansas, Oklahoma, Arkansas and Louisiana, 32" x 48" board, if grey surfaced and round edged, is subject to minimum plasterboard price.

(c) In Henrico County, Virginia only, 32" x 48" cutstock plasterboard is subject to minimum plasterboard price.

(9) 36" x 48" Gypsum Board. 36" x 48" is standard plasterboard size in all states for use on specific gypsum roof jobs only and is subject to minimum plasterboard price for such specific gypsum roof jobs.

(10) Delivered carload minimum prices in markets as listed are same as in adjacent cities, as indicated below:

Delivered Carload Minimum Prices in—	*Same as—*
College Park, Ga.	Atlanta, Ga.
Elkridge and Glen Burnie, Maryland	Baltimore, Md.
Bristol, Tenn.	Bristol, Va.
Cheviot & Bridgetown, O.	Cincinnati, O.
Euclid, North Randall & Bedford, O.	Cleveland, O.
Dodson and Edgecomb, Mo.; Rosedale, Waldo, Argentine, Westport, Overland Park and Kansas City, Kansas.	Kansas City, Mo.
Saint Louis County and town of Imperial (in Jefferson County), Missouri	St. Louis, Mo.
Armory, Indian Orchard, Oak Street, and Chicopee, Mass.	Springfield, Mass.
South Windham, Maine	Portland, Maine
Gabe, Shepard, and Wilmont, Okla.	Okla. City, Okla.
Arlington Siding (Poughkeepsie), N. Y.	Poughkeepsie, N. Y.
Rosslyn, Virginia	Washington, D. C.
Omaha, Nebraska	Council Bluffs, Ia.
Moline and Rock Island, Illinois	Davenport, Iowa

(11) Sales to contractors and prefabricated house manufacturers, also extras on odd sizes:

(a) On sales of standard sizes to contractors, roofing contractors, metal ceiling contractors and prefabricated house manufacturers, add differentials per M sq. ft. as follows. (Note: Sales to roofing contractors are for specific roof jobs only):

To Contractors (Incl. Metal Ceiling Contrs.) & to Prefabricated House Mfrs. Std. Sizes		To Roofing Contractors Std. Sizes	
W. Bd.	Pl. Bd.	W. Bd.	Pl. Bd.
2.50	1.25	1.25	1.25

9864 (b) On sales of odd sizes to dealers, contractors, roofing contractors, metal ceiling contractors and prefabricated house manufacturers, add differentials per M sq. ft. as follows: (Note: Sales to roofing contractors are for specific roof jobs only):

To Dealers Odd Sizes		To Contractors (Incl. Metal Ceiling Contrs.) & to Prefabricated House Mfrs. Odd Sizes		To Roofing Contractors Odd Sizes	
W. Bd.	Pl. Bd.	W. Bd.	Pl. Bd.	W. Bd.	Pl. Bd.
2.50	1.25	5.00	2.50	1.25	1.25

Yours very truly,

UNITED STATES GYPSUM COMPANY,

Vice President.

† Indicates change in this reissue.

9865 Del'd. Prices Into: (See Descriptions of Areas Below)		1/4" Gypsum Wallboard	3/8" Gypsum Wallboard	1/2" Gypsum Wallboard	1/2" Gypsum Sheathing	3/8" Tiled Gypsum Wallbd.	1/4" Gypsum Lath	3/8" Gypsum Lath	1/2" Gypsum Lath
Metro N. Y.—N. J., Boston and Philadelphia Areas	Straight Cars	20.00	25.00	26.00	22.00	50.60	15.00	15.00	16.25
(See Notes b & c) Southeast New York & Southern New Jersey Areas, Also Lehigh and Northampton Counties, Penna. and New Castle County, Del.	Pool or Mxd. Cars	21.00	26.00	27.00	23.00	51.00	16.00	16.00	17.25
	Straight, Pool or Mxd. Cars	21.00	26.00	27.00	23.00	51.00	16.00	16.00	17.25
Chicago Area	Straight, Pool or Mxd. Cars	20.50	25.50	26.50	17.66	50.50	15.50	15.50	16.75
Detroit Area	Straight, Pool or Mxd. Cars	20.60	25.60	26.60	20.47	50.60	15.60	15.00	16.85
Grand Rapids Switching Area	Straight, Pool or Mxd. Cars	21.00	26.00	27.00	23.00	51.00	16.00	16.00	17.25

Notes and exceptions apply to delivered price areas listed above:

(a) Description of Areas:

Metro New York-New Jersey Area: Manhattan, Bronx, Kings, Queens, Richmond, Westchester, Rockland, Nassau and Suffolk Counties, N. Y., also Hudson, Essex, Union, Bergen, Passaic, Morris, Middlesex, Mercer, Somerset, Monmouth, Hunterdon, Warren, Sussex and Ocean Counties, New Jersey.

Philadelphia Area: Bucks, Montgomery, Chester, Delaware and Philadelphia Counties, Pennsylvania and Camden County, New Jersey.

†Boston Area: Essex, Middlesex, Suffolk, Norfolk, Plymouth, Bristol, Barnstable, and Worcester Counties, Mass.; Rockingham and Strafford Counties, New Hampshire; York and Cumberland Counties, Maine; and state of Rhode Island.

Southeast New York Area: Orange, Ulster, Sullivan, Putnam and Dutchess Counties, New York.

† Indicates change (to become effective September 19, 1936)

Southern New Jersey Area: Atlantic, Cape May, Gloucester, Salem, Cumberland and Burlington Counties, New Jersey.

Chicago Area: Cook and DuPage Counties, Illinois, Lake County, Indiana and following towns in Lake County, Illinois: Deerfield, Highland Park and Lake Forest.

Detroit Area: Wayne County, Michigan; towns of Birmingham, Clawson, Farmington, Ferndale and Royal Oak in Oakland County, Michigan; and towns of Warren, 9866 Halfway, Fraser, Roseville, Saint Clair Shores and Centerline in Macomb County, Michigan.

Grand Rapids, Mich. Switching Area: As described in published railroad freight tariffs.

†(b) Delivered prices for shipment in straight cars into Metro New York-New Jersey, Philadelphia and Boston Areas apply on straight carloads of patented gypsum board products consigned to one destination and invoiced to one account. Any mixture of regular patented board products (including special surfaced gypsum board products) and metallized patented board products may be combined to make up the required minimum.

Exceptions: Refer to section (c) of paragraph (2) and section (b) of paragraph (3) for minimum prices of 1/2" T&G Sheathing into Queens and Nassau Counties and several towns in Suffolk County, New York, also of 5/16" plasterboard into Mercer County, New Jersey, Kent and Providence Counties, Rhode Island.

Where any licensee or any of its employees, salesmen or executives has knowledge or notice, either directly or indirectly, that orders for less than straight car quantities of patented gypsum board products to be shipped into the above defined areas have been pooled for the purpose of or for effect of obtaining the reduced price for straight cars for each participant in the pool, licensor shall regard such sale as made at a price less than the minimum price fixed by the licensor and a violation of the terms of the license agreement.

†(c) In pool cars or mixed cars into the Metro New York-New Jersey area, Philadelphia area and the Boston area as described above, minimum quantity is 5000 sq. ft. of patented gypsum board and/or lath products consigned

† Indicates change.

to one destination and invoiced to one account. Any mixture of metallized and regular patented products (including special surfaced gypsum board products) may be combined to make up the required minimum.

Exceptions: Refer to section (c) of paragraph (2) and section (b) of paragraph (3) for minimum prices of 1/2" T&G Sheathing into Queens and Nassau Counties and several towns in Suffolk County, New York, also of 5/16" plasterboard into Mercer County, New Jersey, Kent and Providence Counties, Rhode Island.

(6) 24"x48" Cutstock Plasterboard. In states of Kansas, Missouri, Oklahoma, Arkansas, Mississippi and Alabama the minimum price is $17.50 per M sq. ft. for 1/4" and 3/8" thicknesses and $18.75 per M sq. ft. for 1/2" thickness, f.o.b. Plasterco, Va., Grand Rapids, Mich., Fort Dodge, Iowa, East Chicago, Indiana, Gypsum, Ohio, Southard, Oklahoma, Sweetwater, Texas and Acme, Texas.

(7) 1/4" and 3/8" Cutstock Plasterboard: The minimum price of 1/4" and 3/8" patented open edge (cutstock) gypsum plasterboard, in straight and pool carloads, or in mixed carloads with other gypsum products is $15.00 per M sq. ft. f.o.b. cars delivered to dealers' warehouse or siding in Niagara, Erie (including town of Gowanda, N. Y. Monroe and Wayne Counties, N. Y.

This price does not apply to 32"x48" board.

(8) 32"x48" Gypsum Board. In all areas 32"x48" gypsum board is subject to the minimum wallboard price except:

9867 (3) 5/16" Plasterboard. The minimum price of 5/16" patented gypsum plasterboard (weight 1175# per M), in straight and pool carloads, or in mixed carloads with other gypsum products, for shipment into following areas only, is as follows:

†(a) $12.00 per M sq. ft. F.O.B. Fort Dodge, Iowa, East Chicago, Indiana, and Grand Rapids, Michigan for shipment into State of Minnesota. (Confirms telegram dated 9-28-36).

(b) $15.00 per M sq. ft. f.o.b. cars delivered to dealers' warehouse or siding in the following markets:

† Indicates changes.

† — Cumberland County, Pennsylvania (Effective October 6, 1936).
— Cuyahoga County (Cleveland) and towns of Willoughby and Wickliffe, Ohio.
† — Dallas County, Texas (Dallas) (Confirms telegram dated 9-28-36).
— Dauphin County, Pennsylvania (Harrisburg).
— Douglas County, Nebraska (Omaha).
— Franklin County, Massachusetts (Greenfield).
— Franklin County, Ohio (Columbus).
— Hampden County, Massachusetts (Springfield).
— Hampshire County, Massachusetts (Northampton).
— Hanover County, Virginia.
— Hartford County, Connecticut (Hartford).
— Henrico County, Virginia (Richmond).
— Kent County, Rhode Island.
† — Knox County, Tennessee (Knoxville) (Confirms telegram 9-28-36).
— Lancaster County, Pennsylvania (Lancaster).
— Lackawanna County, Pennsylvania (Scranton).
— Luzerne County, Pennsylvania (Wilkes-Barre).
— Marion County, Indiana (Indianapolis).
— Mercer County, New Jersey (Trenton—see paragraph (5) for minimum quantity required for shipment in pool cars or mixed cars).
— Norfolk County, Virginia (Norfolk).
— Oklahoma County, Oklahoma (Oklahoma City).
— Peoria County, Illinois (Peoria).
— Pottawatomie County, Iowa (Council Bluffs).
— Princess Anne County, Virginia.
— Providence County, Rhode Island (Providence).
— Roanoke County, Virginia (Roanoke).
— Sangamon County, Illinois (Springfield).
— Tulsa County, Oklahoma (Tulsa).
— Woodbury County, Iowa (Sioux City).

also the St. Louis area as follows: the City of St. Louis, Missouri; all of Saint Louis County, Missouri; and the town of Imperial (in Jefferson County), Missouri.

(c) $16.00 per M sq. ft. f.o.b. cars delivered to dealers' warehouse or siding in the following markets:

— Broward County, Florida.
— Buchanan County, Missouri (St. Joseph).
— Cass County, North Dakota (Fargo).
— Dade County, Florida (Miami).
† — Davidson County, Tennessee (Nashville) (Confirms telegram dated 9-28-36).

† Indicates changes.

— DeKalb County, Georgia.
— Fulton County, Georgia (Atlanta).
— Greene County, Missouri (Springfield).
— Jasper County, Missouri (Joplin).

9868 (a) Where used for specific roof jobs it is subject to the minimum plasterboard price for such specific jobs.

(b) In all states east of the Mississippi River and in the states of Iowa, Minnesota, Missouri, Nebraska, Colorado, Kansas, Oklahoma, Arkansas and Louisiana, 32″x48″ board, if grey surfaced and round edged, is subject to minimum plasterboard price.

(c) In Henrico County, Virginia only, 32″x48″ cutstock plasterboard is subject to minimum plasterboard price.

(9) 36″x48″ Gypsum Board. 36″x48″ is standard plasterboard size in all states for use on specific gypsum roof jobs only and is subject to minimum plasterboard price for such specific gypsum roof jobs.

(10) Delivered carload minimum prices in markets as listed are same as in adjacent cities, as indicated below:

Delivered-Carload Minimum Prices in—	*Same as—*
College Park, Ga.	Atlanta, Ga.
Elkridge and Glen Burnie, Maryland	Baltimore, Md.
Bristol, Tenn.	Bristol, Va.
Cheviot & Bridgetown, O.	Cincinnati, O.
Euclid, North Randall & Bedford, O.	Cleveland, O.
Dodson and Edgecomb, Mo.; Rosedale, Waldo, Argentine, Westport, Overland Park and Kansas City, Kansas	Kansas City, Mo.
Saint Louis County and town of Imperial (in Jefferson County), Missouri	St. Louis, Mo.
Armory, Indian Orchard, Oak Street, and Chicopee, Mass.	Springfield, Mass.
South Windham, Maine	Portland, Maine
Gabe, Shepard and Wilmont, Okla.	Okla. City, Okla.
Arlington Siding (Poughkeepsie), N. Y.	Poughkeepsie, N. Y.
Rosslyn, Virginia	Washington, D. C.
Omaha, Nebraska	Council Bluffs, Ia.
†Moline, East Moline and Rock Island, Illinois	Davenport, Iowa
†Virginia Beach, Virginia	Norfolk, Va.

† Indicates changes (to become effective October 6, 1936)

(11) Sales to contractors and prefabricated house manufacturers, also extras on odd sizes:

(a) On sales of standard sizes to contractors, roofing contractors, metal ceiling contractors and prefabricated house manufacturers, add differentials per M sq. ft. as follows. (Note: Sales to roofing contractors are for specific roof jobs only):

To Contractors (Incl. Metal Ceiling Contrs.) & to Prefabricated House Mfrs.- Std. Sizes		To Roofing Contractors Std. Sizes	
W. Bd.	Pl. Bd.	W. Bd.	Pl. Bd.
2.50	1.25	1.25	1.25

9869 (3) 5/16" Plasterboard. The minimum price of 5/16" patented gypsum plasterboard (weight 1175# per M), in straight and pool carloads, or in mixed carloads with other gypsum products, for shipment into following areas only, is as follows:

†(a) $12.00 per M sq. ft. F.O.B. Fort Dodge, Iowa, East Chicago, Indiana, and Grand Rapids, Michigan for shipment into State of Minnesota, also into the City of Superior, Wisconsin.

(b) $15.00 per M sq. ft. f.o.b. cars delivered to dealers' warehouse or siding in the following markets:

— Cumberland County, Pennsylvania.
— Cuyahoga County, (Cleveland) and towns of Willoughby and Wickliffe, Ohio.
— Dallas County, Texas (Dallas).
— Dauphin County, Pennsylvania (Harrisburg).
— Douglas County, Nebraska (Omaha).
— Franklin County, Massachusetts (Greenfield).
— Franklin County, Ohio (Columbus).
— Hampden County, Massachusetts (Springfield).
— Hampshire County, Massachusetts (Northampton).
— Hanover County, Virginia.
— Hartford County, Connecticut (Hartford).
— Henrico County, Virginia (Richmond).
— Kent County, Rhode Island.
— Knox County, Tennessee (Knoxville).
— Lancaster County, Pennsylvania (Lancaster).
— Lackawanna County, Pennsylvania (Scranton).
— Luzerne County, Pennsylvania (Wilkes-Barre).

† Indicates changes (to become effective October 14, 1936)

— Marion County, Indiana (Indianapolis).
— Mercer County, New Jersey (Trenton—see paragraph (5) for minimum quantity required for shipment in pool cars or mixed cars).
— Norfolk County, Virginia (Norfolk).
— Oklahoma County, Oklahoma (Oklahoma City).
— Peoria County, Illinois (Peoria).
— Pottawatomie County, Iowa (Council Bluffs).
— Princess Anne County, Virginia.
— Providence County, Rhode Island (Providence).
— Roanoke County, Virginia (Roanoke).
— Sangamon County, Illinois (Springfield).
— Tulsa County, Oklahoma (Tulsa).
— Woodbury County, Iowa (Sioux City).

Also the St. Louis area as follows: the City of St. Louis, Missouri; all of Saint Louis County, Missouri; and the town of Imperial (in Jefferson County), Missouri.

(c) $16.00 per M sq. ft. f.o.b. cars delivered to dealers' warehouse or siding in the following markets:

— Broward County, Florida.
— Buchanan County, Missouri (St. Joseph).
— Cass County, North Dakota (Fargo).
— Dade County, Florida (Miami).
— Davidson County, Tennessee (Nashville).
— De Kalb County, Georgia.
— Fulton County, Georgia (Atlanta).
— Greene County, Missouri (Springfield).
— Jasper County, Missouri (Joplin).
9870 — Lancaster County, Nebraska (Lincoln).
— Minnehaha County, South Dakota (Sioux Falls).
— Monroe County, Florida.
— Newton County, Missouri (Joplin).
— Palm Beach County, Florida.
— Sedgewick County, Kansas (Wichita).
— Shawnee County, Kansas (Topeka).

Also towns of Kansas City, Dodson and Edgecomb, Missouri, and Rosedale, Waldo, Argentine, Westport, Overland Park and Kansas City, Kansas; also that portion of Kentucky west of and including Marshall and Calloway Counties and that portion of Tennessee west of and including Henry, Benton, Decatur and Hardin Counties.

(d) $16.25 per M sq. ft. f.o.b. cars delivered to dealers' warehouse or siding in Jefferson County, Alabama, (Birmingham).

(e) $17.50 per M sq. ft. f.o.b. cars delivered to dealers' warehouse or siding in Duval County, Florida (Jacksonville).

(f) $17.50 per M sq. ft. f.o.b. cars delivered to dealers' warehouse or siding in Orleans County, Louisiana (New Orleans).

(4) Plasterboard Exceptions:

(a) The minimum price of 3/8" patented gypsum plasterboard, in straight and pool carloads, or in mixed carloads with other gypsum products is $21.87 per M sq. ft. f.o.b. cars delivered to dealers' warehouse or siding in Palm Beach, Dade, Broward and Monroe Counties, Florida.

†(b) The minimum price of 1/4" or 3/8" patented gypsum plasterboard, in straight and pool carloads, or in mixed carloads with other gypsum products is $15.00 per M sq. ft. f.o.b. cars delivered to dealers warehouse or siding in Niagara, Erie (including town of Gowanda, N. Y.), Monroe and Wayne Counties, New York.

(5) Delivered Price Areas:

Prices of patented gypsum board products, in straight and pool cars or in mixed cars with other gypsum products, f.o.b. cars delivered to dealers warehouse or siding within areas listed below are as follows:

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† Indicates change (to become effective October 14, 1936)

9871 Del'd. Prices Into: (See Descriptions of Areas Below)		1/4" Gypsum Wallboard	3/8" Gypsum Wallboard	1/2" Gypsum Wallboard	1/2" Gypsum Sheathing	3/8" Tiled Gypsum Wallbd.	1/4" Gypsum Lath	3/8" Gypsum Lath	1/2" Gypsum Lath
Metro N. Y.—N. J., Boston and Philadelphia Areas (See Notes b & c)	Straight Cars	20.00	25.00	26.00	22.00	50.00	15.00	15.00	16.25
	Pool or Mxd. Cars	21.00	26.00	27.00	23.00	51.00	16.00	16.00	17.25
Southeast New York & Southern New Jersey Areas, Also Lehigh and Northampton Counties, Penna. and New Castle County, Del.	Straight, Pool or Mxd. Cars	21.00	26.00	27.00	23.00	51.00	16.00	16.00	17.25
Chicago Area	Straight, Pool or Mxd. Cars	20.50	25.50	26.50	17.66	50.50	15.50	15.50	16.75
†Detroit Area	Straight, Pool or Mxd. Cars	20.60	25.60	26.60	20.47	50.60	15.00	15.00	16.85
Grand Rapids Switching Area	Straight, Pool or Mxd. Cars	21.00	26.00	27.00	23.00	51.00	16.00	16.00	17.25

Notes and exceptions applying to delivered price areas listed above:

(a) Descriptions of Areas:

Metro New York-New Jersey Area: Manhattan, Bronx, Kings, Queens, Richmond, Westchester, Rockland, Nassau and Suffolk Counties, N. Y., also Hudson, Essex, Union, Bergen, Passaic, Morris, Middlesex, Mercer, Somerset, Monmouth, Hunterdon, Warren, Sussex and Ocean Counties, New Jersey.

Philadelphia Area: Bucks, Montgomery, Chester, Delaware and Philadelphia Counties, Pennsylvania and Camden County, New Jersey.

Boston Area: Essex, Middlesex, Suffolk, Norfolk, Plymouth, Bristol, Barnstable, and Worcester Counties, Mass.; Rockingham and Strafford Counties, New Hampshire; York and Cumberland Counties, Maine; and state of Rhode Island.

Southeast New York Area: Orange, Ulster, Sullivan, Putnam and Dutchess Counties, New York.

Southern New Jersey Area: Atlantic, Cape May, Gloucester, Salem, Cumberland and Burlington Counties, New Jersey.

† Indicates change (to become effective October 14, 1936)

Chicago Area: Cook and DuPage Counties, Illinois, Lake County, Indiana and following towns in Lake County, Illinois: Deerfield, Highland Park and Lake Forest.

Detroit Area: Wayne County, Michigan; towns of Birmingham, Clawson, Farmington, Ferndale and Royal Oak in Oakland County, Michigan; and towns of Warren,

9872 (3) 5/16" Plasterboard. The minimum price of 5/16" patented gypsum plasterboard (weight 1175# per M), in straight and pool carloads, or in mixed carloads with other gypsum products, for shipment into following areas only, is as follows:

(a) $12.00 per M sq. ft. f.o.b. Fort Dodge, Iowa, East Chicago, Indiana, and Grand Rapids, Michigan for shipment into State of Minnesota, also into the City of Superior, Wisconsin.

(b) $15.00 per M sq. ft. f.o.b. cars delivered to dealers' warehouse or siding in the following markets:

— Cumberland County, Pennsylvania.
— Cuyahoga County, (Cleveland) and towns of Willoughby and Wickliffe, Ohio.
— Dallas County, Texas (Dallas).
— Dauphin County, Pennsylvania (Harrisburg).
— Douglas County, Nebraska (Omaha).
— Franklin County, Massachusetts (Greenfield).
— Franklin County, Ohio (Columbus).
— Hampden County, Massachusetts (Springfield).
— Hampshire County, Massachusetts (Northampton).
— Hanover County, Virginia.
— Hartford County, Connecticut (Hartford).
— Henrico County, Virginia (Richmond).
— Kent County, Rhode Island.
— Knox County, Tennessee (Knoxville).
— Lancaster County, Pennsylvania (Lancaster).
— Lackawanna County, Pennsylvania (Scranton).
— Luzerne County, Pennsylvania (Wilkes-Barre).
— Marion County, Indiana (Indianapolis).
— Mercer County, New Jersey (Trenton—see paragraph (5) for minimum quantity required for shipment in pool cars or mixed cars).
— Norfolk County, Virginia (Norfolk).
— Oklahoma County, Oklahoma (Oklahoma City).
— Peoria County, Illinois (Peoria).
— Pottawatomie County, Iowa (Council Bluffs).

— Princess Anne County, Virginia.
— Providence County, Rhode Island (Providence).
— Roanoke County, Virginia (Roanoke).
— Sangamon County, Illinois (Springfield).
† — Tazewell County, Illinois.
— Tulsa County, Oklahoma (Tulsa).
— Woodbury County, Iowa (Sioux City).

Also the St. Louis area as follows: the City of St. Louis, Missouri; all of Saint Louis County, Missouri; and the town of Imperial (in Jefferson County), Missouri.

(c) $16.00 per M sq. ft. f.o.b. cars delivered to dealers' warehouse or siding in the following markets:

— Broward County, Florida.
— Buchanan County, Missouri (St. Joseph).
— Cass County, North Dakota (Fargo).
— Dade County, Florida (Miami).
— Davidson County, Tennessee (Nashville).
— DeKalb County, Georgia.
— Fulton County, Georgia (Atlanta).
— Greene County, Missouri (Springfield).
— Jasper County, Missouri (Joplin).

873 Del'd. Prices Into: (See Descriptions of Areas Below)		1/4" Gypsum Wallboard	3/8" Gypsum Wallboard	1/2" Gypsum Wallboard	1/2" Gypsum Sheathing	3/8" Tiled Gypsum Wallbd.	1/4" Gypsum Lath	3/8" Gypsum Lath	1/2" Gypsum Lath
Metro N. Y.—N. J., Boston and Philadelphia Areas (See Notes b & c)	Straight Cars	20.00	25.00	26.00	22.00	50.00	15.00	15.00	16.25
	Pool or Mxd. Cars	21.00	26.00	27.00	23.00	51.00	16.00	16.00	17.25
Southeast New York & Southern New Jersey Areas, Also Lehigh and Northampton Counties, Penna. and New Castle County, Del.	Straight, Pool or Mxd. Cars	21.00	26.00	27.00	23.00	51.00	16.00	16.00	17.25
Chicago Area	Straight, Pool or Mxd. Cars	20.50	25.50	26.50	17.66	50.50	15.50	15.50	16.75
Detroit Area	Straight, Pool or Mxd. Cars	20.60	25.60	26.60	20.47	50.60	15.00	15.00	16.85
Grand Rapids Switching Area	Straight, Pool or Mxd. Cars	21.00	26.00	27.00	23.00	51.00	16.00	16.00	17.25

† Indicates changes (to become effective October 24, 1936).

Notes and exceptions applying to delivered price areas listed above:

(a) Descriptions of Areas:

Metro New York-New Jersey Area: Manhattan, Bronx, Kings, Queens, Richmond, Westchester, Rockland, Nassau and Suffolk Counties, N. Y., also Hudson, Essex, Union, Bergen, Passaic, Morris, Middlesex, Mercer, Somerset, Monmouth, Hunterdon, Warren, Sussex and Ocean Counties, New Jersey.

Philadelphia Area: Bucks, Montgomery, Chester, Delaware and Philadelphia Counties, Pennsylvania and Camden County, New Jersey.

†Boston Area: Essex, Middlesex, Suffolk, Norfolk, Plymouth, Bristol, Barnstable, and Worcester Counties, Mass.; Rockingham, Hillsborough and Strafford Counties, New Hampshire; York and Cumberland Counties, Maine; and state of Rhode Island.

Southeast New York Area: Orange, Ulster, Sullivan, Putnam and Dutchess Counties, New York.

Southern New Jersey Area: Atlantic, Cape May, Gloucester, Salem, Cumberland, and Burlington Counties, New Jersey.

Chicago Area: Cook and DuPage Counties, Illinois, Lake County, Indiana and following towns in Lake County, Illinois: Deerfield, Highland Park and Lake Forest.

Detroit Area: Wayne County, Michigan; towns of Birmingham, Clawson, Farmington, Ferndale and Royal Oak in Oakland County, Michigan; and towns of Warren.

† Indicates change (to become effective October 28, 1936).

9874 UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

DECEMBER 29, 1936.

Carload Shipments
Board License Bulletin No. 1 (Page 1)—Cancels Page 1
Dated September 11, 1936

This Reissue Cancels All Supplements to Board License Bulletin No. 1 Dated September 11, 1936.

DEAR SIRS: Referring to our license contract with you, you are hereby notified that effective January 1, 1937 the minimum prices at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent); including Haggerty patent number 1,5 ,452 and Hite patent number 1,230,297, are as follows:

†Patented gypsum wallboard and plasterboard products shall be quoted and sold on a delivered basis, f.o.b. cars destination. Delivered price is lowest combination of mill price plus freight from that mill to destination (See Note # page 2). In stopover cars delivered price for any part of car is carload delivered price as above defined to point of delivery of that part of car. In every case rates as shown in published railroad freight tariffs apply. To determine board footage required to meet straight or mixed carload minimum weights, as shown in published railroad freight tariffs, use weights per M sq. ft. as shown below:

Dealer Prices f.o.b. cars: (Applying for standard sizes as listed in Bulletin No. 4)	1/4" Gypsum Wallboard (Wt. 950 # per M)	5/16" Gypsum Wallboard (Wt. 1175 # per M) See Note *	3/8" Gypsum Wallboard (Wt. 1400 # per M)	1/2" Gypsum Wallboard (Wt. 1900 # per M)	1/2" Gypsum Sheathing (Wt. 1900 # per M)	3/4" Gypsum Wallboard (Wt. 3300 # per M)	3/8" Tiled Gypsum Wallboard (Wt. 1400 # per M)	1/4" Gypsum Plasterboard (Wt. 950 # per M)	3/8" Gypsum Plasterboard (Wt. 1400 # per M)	1/2" Gypsum Plasterboard (Wt. 1900 # per M)	3/4" Gypsum Plasterboard (Wt. 3300 # per M)
Acme, Texas	20.00	— —	25.00	26.00	22.00	— —	50.00	15.00	15.00	16.25	— —
Boston (Charlestown) Mass.	20.00	— —	25.00	26.00	22.00	— —	50.00	15.00	15.00	16.25	— —
Detroit, Mich.	20.00	— —	25.00	26.00	22.00	— —	50.00	15.00	15.00	16.25	— —
East Chicago, Ind.	20.00	— —	25.00	26.00	22.00	— —	50.00	15.00	15.00	16.25	— —
Fort Dodge, Iowa	20.00	— —	25.00	26.00	22.00	36.50	50.00	15.00	15.00	16.25	20.00
Grand Rapids, Mich.	20.00	— —	25.00	26.00	22.00	— —	50.00	15.00	15.00	16.25	— —
Gypsum, Ohio	20.00	24.00	25.00	26.00	22.00	36.50	50.00	15.00	15.00	16.25	20.00
†Heath, Montana	22.50	— —	25.00	26.00	32.00	— —	50.00	15.00	15.00	16.25	— —
†Laramie, Wyo.	24.00	— —	30.75	— —	— —	— —	55.75	— —	20.75	— —	— —
†Loveland, Colo.	23.75	— —	30.50	— —	— —	— —	55.50	— —	20.50	— —	— —
N. Brighton, S. I., N. Y.	20.00	— —	25.00	26.00	22.00	— —	50.00	15.00	15.00	16.25	— —
Oakfield, N. Y.	20.00	24.00	25.00	26.00	22.00	36.50	50.00	15.00	15.00	16.25	20.00
Philadelphia, Pa.	20.00	— —	25.00	26.00	22.00	— —	50.00	15.00	15.00	16.25	— —
Plastereo, Va.	20.00	— —	25.00	26.00	22.00	— —	50.00	15.00	15.00	16.25	— —
Southard, Okla.	20.00	— —	25.00	26.00	22.00	36.50	50.00	15.00	15.00	16.25	20.00
Sweetwater, Texas	20.00	— —	25.00	26.00	22.00	— —	50.00	15.00	15.00	16.25	— —

* 5/16" Gypsum wallboard is for sale to manufacturers only, for fabrication at their factories—not a dealer item.

9875 #Where an odd 'rate per ton' is in effect (example: $3.45 per ton) the freight per M sq. ft. shall be figured on basis of rate per cwt. nearest to rate per ton, fractions of less than 1/4¢ per cwt. to be dropped, fractions of 1/4¢ per cwt. to 1/2¢ per cwt. to be considered as 1/2¢.

Example: The rate of $3.45 per ton equals 17¼¢ per cwt. For purpose of arriving at delivered price, however, the rate of 17½¢ shall be used.

†Stopover, switching and other extra delivery charges:

All stopover charges, switching charges and other extra delivery charges will be paid by customers. Exception: Stopover charges need not be included on shipments into the states of Michigan, Wisconsin, Illinois, Indiana, Ohio, Kansas, Missouri, Arkansas, Oklahoma, Iowa, Minnesota, North Dakota, South Dakota, Texas, Nebraska, Kentucky, Montana, Colorado and Wyoming; also stopover charges need not be included on shipments to destinations within the following Gypsum Board Del'd Price Areas: Metro New York-New Jersey, Philadelphia, Boston, Southeast New York, Southern New Jersey Areas: Lehigh and Northampton Counties, Pennsylvania; New Castle County, Delaware; State of Connecticut; Cheshire, Sullivan, Merrimac and Belknap Counties, New Hampshire. (Refer to page 5 for descriptions of areas).

The above prices apply to the sale of all board embodying the claims of our patents in all markets except where an exception is made as hereinafter expressly stated:

(1) Until further notice the above minimum prices shall not apply to sales of patented gypsum wallboard and gypsum plasterboard products for shipment to or delivery in the following area: States of California, Arizona, Nevada, Utah, Idaho, Oregon and Washington, also that portion of State of Montana west of and including Phillips, Petroleum, Musselshell, Yellowstone and Carbon Counties.

(2) 5/16" Plasterboard. The minimum price of 5/16" patented gypsum plasterboard (weight 1175# per M), in straight and pool carloads, or in mixed carloads with other gypsum products, for shipment into following areas only, is as follows:

(a) $12.00 per M sq. ft. f.o.b. Fort Dodge, Iowa, East Chicago, Indiana, and Grand Rapids, Michigan for shipment into State of Minnesota, also into the City of Superior, Wisconsin.

(b) $15.00 per M sq. ft. f.o.b. cars delivered to dealers' warehouse or siding in the following markets:

— Cumberland County, Pennsylvania.
— Dallas County, Texas (Dallas).
— Dauphin County, Pennsylvania (Harrisburg).
— Douglas County, Nebraska (Omaha).
— Franklin County, Massachusetts (Greenfield).
— Franklin County, Ohio (Columbus).
9876 — Hampden County, Massachusetts (Springfield).
— Hampshire County, Massachusetts (Northampton).
— Hanover County, Virginia.
— Hartford County, Connecticut (Hartford).
— Henrico County, Virginia (Richmond).
— Kent County, Rhode Island.
— Knox County, Tennessee (Knoxville).
— Lancaster County, Pennsylvania (Lancaster).
— Lackawanna County, Pennsylvania (Scranton).
— Luzerne County, Pennsylvania (Wilkes-Barre).
— Marion County, Indiana (Indianapolis).
— Mercer County, New Jersey (Trenton—see paragraph (4) for minimum quantity required for shipment in pool cars or mixed cars).
— Norfolk County, Virginia (Norfolk).
— Oklahoma County, Oklahoma (Oklahoma City).
— Peoria County, Illinois (Peoria).
— Pottawatomie County, Iowa (Council Bluffs).
— Princess Anne County, Virginia.
— Providence County, Rhode Island (Providence).
— Roanoke County, Virginia (Roanoke).
— Sangamon County, Illinois (Springfield).
— Tazewell County, Illinois.
— Tulsa County, Oklahoma (Tulsa).
— Woodbury County, Iowa (Sioux City).

Also the St. Louis area as follows: the City of St. Louis, Missouri; all of Saint Louis County, Missouri; and the town of Imperial (in Jefferson County), Missouri.

(c) $16.00 per M sq. ft. f.o.b. cars delivered to dealers' warehouse or siding in the following markets:

— Broward County, Florida.
— Buchanan County, Missouri (St. Joseph).
— Cass County, North Dakota (Fargo).
— Dade County, Florida (Miami).
— Davidson County, Tennessee (Nashville).
— DeKalb County, Georgia.
— Fulton County, Georgia (Atlanta).
— Greene County, Missouri (Springfield).
— Jasper County, Missouri (Joplin).
— Lancaster County, Nebraska (Lincoln).
— Minnehaha County, South Dakota (Sioux Falls).
— Monroe County, Florida.
— Newton County, Missouri (Joplin).
— Palm Beach County, Florida.
— Sedgewick County, Kansas (Wichita).
— Shawnee County, Kansas (Topeka).

Also towns of Kansas City, Dodson and Edgecomb, Missouri, and Rosedale, Waldo, Argentine, Westport, Overland Park and Kansas City, Kansas; also that portion of Kentucky west of and including Marshall and Calloway Counties and that portion of Tennessee west of and including Henry, Benton, Decatur and Hardin Counties.

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(d) $16.25 per M sq. ft. f.o.b. cars delivered to dealers' warehouse or siding in Jefferson County, Alabama (Birmingham).

(e) $17.00 per M sq. ft. f.o.b. cars delivered to dealers' warehouse or siding in Duval County, Florida (Jacksonville).

(f) $17.50 per M sq. ft. f.o.b. cars delivered to dealers' warehouse or siding in Orleans County, Louisiana (New Orleans).

(g) Minimum price of 5/16" patented gypsum plasterboard is same as minimum price of 3/8" patented gypsum plasterboard f.o.b. cars delivered to dealers warehouse or siding in Cuyahoga County (Cleveland) and towns of Willoughby and Wickliffe, Ohio.

(3) Plasterboard Exceptions:

(a) The minimum price of 3/8" patented gypsum plasterboard, in straight and pool carloads, or in mixed carloads with other gypsum products is $21.45 per M sq. ft.

f.o.b. cars delivered to dealers warehouse or siding in Palm Beach, Dade, Broward and Monroe Counties, Florida.

(b) The minimum price of 1/4" or 3/8" patented gypsum plasterboard, in straight and pool carloads, or in mixed carloads with other gypsum products is $15.00 per M sq. ft. f.o.b. cars delivered to dealers' warehouse or siding in Niagara, Erie (including town of Gowanda, N. Y.) Monroe and Wayne Counties, New York.

†(c) The minimum price of 1/4" or 3/8" patented gypsum plasterboard for shipment into Lower Michigan (except Monroe County and except the Detroit Area) is $14.00 per M sq. ft. in cars f.o.b. mill, Detroit Michigan or $15.00 per M sq. ft. f.o.b. Grand Rapids, Michigan. Refer to next paragraph for minimum price into Monroe County, Michigan. Refer to paragraph (4) for minimum price into the Detroit Area.

†(d) The minimum price of 1/4" or 3/8" patented gypsum plasterboard for shipment into Monroe County, Michigan, in straight, pool or mixed cars, is $15.50 per M sq. ft. f.o.b. cars, delivered to dealers warehouse or siding.

†(e) The minimum price of 1/4" or 3/8" patented gypsum plasterboard for shipment into Lucas County, Ohio, and town of Perrysburg, Ohio, in straight, pool or mixed cars, is $16.00 per M sq. ft. f.o.b. cars, delivered to dealers warehouse or siding.

†(f) The minimum price of 1/4" or 3/8" patented gypsum plasterboard, in sizes 16"x32" and 16"x48" only, in straight, pool, or mixed cars, is $14.00 per M sq. ft. f.o.b. cars delivered to dealers' warehouse or siding in Kings, Queens, Nassau, and Suffolk Counties, New York. Refer to next paragraph for minimum prices of sizes other than 16"x32" and 16"x48".

9878 (4) Delivered Price Areas:

Prices of patented gypsum board products, in straight and pool cars or in mixed cars with other gypsum products, f.o.b. cars delivered to dealers warehouse or siding with areas listed below are as follows:

Delivered Prices Into: (See Descriptions of Areas Below)		1/4" Gypsum Wallboard	3/8" Gypsum Wallboard	1/2" Gypsum Wallboard	1/2" Gypsum Sheathing	3/8" Tile'd Gypsum Wallboard	1/4" Gypsum Lath	3/8" Gypsum Lath	1/2" Gypsum Lath
Metro N. Y.—N. J., Boston and Philadelphia Areas (See Notes b & c)	Straight Cars	20.00	25.00	26.00	22.00	50.00	15.00	15.00	16.25
	Pool or Mxd. Cars .	21.00	26.00	27.00	23.00	51.00	16.00	16.00	17.25
†Sullivan, Merrimac & Belknap Counties, New Hampshire, Lehigh and Northampton Counties, Penna. and New Castle County, Del.	Straight, Pool or Mxd. Cars	21.00	26.00	27.00	23.00	51.00	16.00	16.00	17.25
†Chicago Area .	Straight, Pool or Mixed Cars,	20.50	25.50	26.50	22.50	50.50	15.50	15.50	16.75
†Detroit Area	Straight, Pool or Mixed Cars	20.60	25.60	26.60	22.60	50.60	15.00	15.00	16.85
Grand Rapids Switching Area	Straight, Pool or Mixed Cars	21.00	26.00	27.00	23.00	51.00	16.00	16.00	17.25

Notes and exceptions applying to delivered price areas listed above:

(a) Descriptions of Areas:

Metro New York—New Jersey Area: Manhattan, Bronx, Kings, Queens, Richmond, Westchester, Rockland, Nassau and Suffolk Counties, N. Y., also Hudson, Essex, Union, Bergen, Passaic, Morris, Middlesex, Mercer, Somerset, Monmouth, Hunterdon, Warren, Sussex and Ocean Counties, New Jersey.

Philadelphia Area: Bucks, Montgomery, Chester, Delaware and Philadelphia Counties, Pennsylvania and Camden County, New Jersey.

9879 Boston Area: Essex, Middlesex, Suffolk, Norfolk, Plymouth, Bristol, Barnstable and Worcester Counties, Mass.; Rockingham, Hillsborough and Strafford Counties, New Hampshire; York and Cumberland Counties, Maine; and state of Rhode Island.

Southeast New York Area: Orange, Ulster, Sullivan Putnam and Dutchess Counties, New York.

Southern New Jersey Area: Atlantic, Cape May, Gloucester, Salem, Cumberland, and Burlington Counties, New Jersey.

Chicago Area: Cook and DuPage Counties, Illinois, Lake County, Indiana and following towns in Lake County, Illinois: Deerfield, Highland Park and Lake Forest.

Detroit Area: Wayne County, Michigan; towns of Birmingham, Clawson, Farmington, Ferndale and Royal Oak in Oakland County, Michigan; and towns of Warren, Halfway, Fraser, Roseville, Saint Clair Shores, East Detroit and Centerline in Macomb County, Michigan.

Grand Rapids, Mich. Switching Area: As described in published railroad freight tariffs.

'(b) Delivered prices for shipment in straight cars into Metro New York-New Jersey, Philadelphia and Boston Areas apply on straight carloads of patented gypsum board products consigned to one destination and invoiced to one account. Any mixture of regular patented board products (including special surfaced gypsum board products) and metallized patented board products may be combined to make up the required minimum. Exceptions: Refer to section (b) of paragraph (2) for minimum price of 5/16" plasterboard into Mercer County, New Jersey, Kent and Providence Counties, Rhode Island; also refer to section (f) of paragraph (3) for minimum price of 1/4" and 3/8" plasterboard, in sizes 16"x32" and 16"x48" only, into Kings, Queens, Nassau and Suffolk Counties, New York.

Where any licensee or any of its employees, salesmen or executives has knowledge or notice, either directly or indirectly, that orders for less than straight car quantities of patented gypsum board products to be shipped into the above defined areas have been pooled for the purpose of or for effect of obtaining the reduced price for straight cars for each participant in the pool, licensor shall regard such sale as made at a price less than the minimum price fixed by the licensor and a violation of the terms of the license agreement.

'(c) In pool cars or mixed cars into the Metro New York-New Jersey area, Philadelphia area and the Boston

area as described above, minimum quantity is 5000 sq. ft. of patented gypsum board and/or lath products consigned to one destination and invoiced to one account. Any mixture of metallized and regular patented products (including special surfaced gypsum board products) may be combined to make up the required minimum. Exceptions: Refer to section (b) of paragraph (2) for minimum price of 5/16" plasterboard into Mercer County, New Jersey, Kent and Providence Counties, Rhode Island; also refer to section (f) of paragraph (3) for minimum price of 1/4" and 3/8" plasterboard, in sizes 16"x32" and 16"x48" only, into Kings, Queens, Nassau and Suffolk Counties, New York.

9880 (5) 24"x48" Cutstock Plasterboard. In states of Kansas, Missouri, Oklahoma, Arkansas, Mississippi and Alabama the minimum price is $17.50 per M sq. ft. for 1/4" and 3/8" thicknesses and $18.75 per M sq. ft. for 1/2" thickness, f.o.b. Plasterco, Va., Grand Rapids, Mich., Fort Dodge, Iowa, East Chicago, Indiana, Gypsum, Ohio, Southard, Oklahoma, Sweetwater, Texas and Acme, Texas.

(6) 1/4" and 3/8" Cutstock Plasterboard—The minimum price of 1/4" and 3/8" patented open edge (cutstock) gypsum plasterboard, in straight and pool carloads, or in mixed carloads with other gypsum products is $15.00 per M sq. ft. f.o.b. cars delivered to dealers' warehouse or siding in Niagara, Erie (including town of Gowanda, N. Y.) Monroe and Wayne Counties, N. Y.

This price does not apply to 32"x48" board.

(7) 32"x48" Gypsum Board. In all areas 32"x48" gypsum board is subject to the minimum wallboard price except:

(a) Where used for specific roof jobs it is subject to the minimum plasterboard price for such specific jobs.

(b) In all states east of the Mississippi River and in the states of Iowa, Minnesota, Missouri, Nebraska, Colorado, Kansas, Oklahoma, Arkansas and Louisiana, 32"x48" board, if grey surfaced and round edged, is subject to minimum plasterboard price.

(c) In Henrico County, Virginia only, 32"x48" cutstock plasterboard is subject to minimum plasterboard price.

(8) 36″x48″ Gypsum Board. 36″x48″ is standard plasterboard size in all states for use on specific gypsum roof jobs only and is subject to minimum plasterboard price for such specific gypsum roof jobs.

(9) Delivered carload minimum prices in markets as listed are same as in adjacent cities, as indicated below:

Delivered Carload Minimum Prices in—	*Same as—*
College Park, Ga.	Atlanta, Ga.
Elkridge and Glen Burnie, Maryland	Baltimore, Md.
Bristol, Tenn.	Bristol, Va.
Cheviot & Bridgetown, O.	Cincinnati, O.
Euclid, North Randall & Bedford, O.	Cleveland, O.
Dodson and Edgecomb, Mo.; Rosedale, Waldo, Argentine, Westport, Overland Park & Kansas City, Kansas	Kansas City, Mo.
South Windham, Maine	St. Louis, Mo.
Gabe, Shepard and Wilmont, Okla.	
Armory, Indian Orchard, Oak Street, & Chicopee, Mass.	Springfield, Mass.
South Windham, Maine	Portland, Maine
Gabe, Shepard and Wilmont, Okla.	Okla. City, Okla.
Arlington Siding (Poughkeepsie), N. Y.	Poughkeepsie, N. Y.
Rosslyn, Virginia	Washington, D. C.
Omaha, Nebraska	Council Bluffs, Ia.
Moline, East Moline and Rock Island, Illinois	Davehport, Iowa
Virginia Beach, Virginia	Norfolk, Va.

9881 (10) Sales to contractors and prefabricated house manufacturers, also extras on odd sizes:

(a) On sales of standard sizes to contractors, roofing contractors, metal ceiling contractors and prefabricated house manufacturers, add differentials per M sq. ft. as follows: (Note: Sales to roofing contractors are for specific roof jobs only):

To Contractors (Incl. Metal Ceiling Contrs.) & to Prefabricated House Mfrs. Std. Sizes		To Roofing Contractors Std. Sizes	
W. Bd.	Pl. Bd.	W. Bd.	Pl. Bd.
2.50	1.25	1.25	1.25

(b) On sales of odd sizes to dealers, contractors, roofing contractors, metal ceiling contractors and prefabricated house manufacturers, add differentials per M sq. ft. as follows: (Note: Sales to roofing contractors are for specific roof jobs only):

To Dealers Odd Sizes		To Contractors (Incl. Metal Ceiling Contrs.) & to Prefabricated House Mfrs. Odd Sizes		To Roofing Contractors Odd Sizes	
W. Bd.	Pl. Bd.	W. Bd.	Pl. Bd.	W. Bd.	Pl. Bd.
2.50	1.25	5.00	2.50	1.25	1.25

Yours very truly,

UNITED STATES GYPSUM COMPANY,

Vice President.

† Indicates change in this reissue.

9882 UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

FEBRUARY 24, 1937

Carload Shipments
Board License Bulletin No. 1 (Page 1)—Cancels
Bulletin No. 1 Dated December 29, 1936

C. NEWMAN

DEAR SIRS: Referring to our license contract with you, you are hereby notified that effective March 1, 1937 the minimum prices at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent); including Haggerty patent number 1,500,452 and Hite patent number 1,230,297, are as follows:

†Patented gypsum board products shall be quoted and sold on a delivered basis, f.o.b. cars destination. Delivered price is lowest combination of mill price plus freight from that mill to destination (See Note # page 2). In stopover cars delivered price for any part of car is carload delivered price as above defined to point of delivery of that part of car. Rates as shown in published freight tariffs, with exceptions as provided for in this Bulletin. To determine board footage required to meet straight or mixed carload minimum weights, as shown in published freight tariffs, use weights per M sq. ft. as shown below:

Dealer Prices f.o.b. cars: (Applying for standard sizes as listed in Bulletin No. 4)	1/4" Gypsum Wallboard (Wt. 950 # per M)	5/16" Gypsum Wallboard (Wt. 1175 # per M) See Note	3/8" Gypsum Wallboard (Wt. 1400 # per M)†	1/2" Gypsum Wallboard (Wt. 1900 # per M)†	1/2" Gypsum Sheathing (Wt. 1900 # per M).	3/4" Gypsum Wallboard (Wt. 3300 # per M)	3/8" Tiled Gypsum Wallboard (Wt. 1400 # per M)	3/8" Gypsum Plaster Lath (Wt. 1400 # per M)†	1/4" Gypsum Liner Board (Wt. 950 # per M)†	3/8" Gypsum Liner Board (Wt. 1400 # per M)†	1/2" Gypsum Liner Board (Wt. 1900 # per M)†
†Acme, Texas	20.00	— —	25.00	26.00	22.00	— —	50.00	13.00	15.00	15.00	16.25
†*Boston, Mass.	*20.00	— —	*24.00	*25.00	*22.00	— —	*50.00	*13.00	*15.00	*15.00	*16.25
†Detroit, Mich.	20.00	— —	25.00	26.00	22.00	— —	50.00	13.00	15.00	15.00	16.25
†East Chicago, Ind.	20.00	— —	25.00	26.00	22.00	— —	50.00	13.00	15.00	15.00	16.25
†Fort Dodge, Iowa	20.00	— —	25.00	26.00	22.00	36.50	50.00	13.00	15.00	15.00	16.25
†Grand Rapids, Mich.	20.00	— —	25.00	26.00	22.00	— —	50.00	13.00	15.00	15.00	16.25
†Gypsum, Ohio	20.00	24.00	25.00	26.00	22.00	36.50	50.00	13.00	15.00	15.00	16.25
†Heath, Montana	22.50	— —	25.00	26.00	32.00	— —	50.00	13.00	15.00	15.00	16.25
†Laramie, Wyo.	24.00	— —	30.75	— —	— —	— —	55.75	18.75	— —	20.75	— —
†Loveland, Colo.	23.75	— —	30.50	— —	— —	— —	55.50	18.50	— —	20.50	— —
†*N. Brighton, S. I., N. Y.	*20.00	— —	*24.00	*25.00	*22.00	— —	*50.00	*13.00	*15.00	*15.00	*16.25
†Oakfield, N. Y.	20.00	24.00	25.00	26.00	22.00	36.50	50.00	13.00	15.00	15.00	16.25
†*Philadelphia, Pa.	*20.00	— —	*24.00	*25.00	*22.00	— —	*50.00	*13.00	*15.00	*15.00	*16.25
†Plastèrco, Va.	20.00	— —	25.00	26.00	22.00	— —	50.00	13.00	15.00	15.00	16.25
†Southard, Okla.	20.00	— —	25.00	26.00	22.00	36.50	50.00	13.00	15.00	15.00	16.25
†Sweetwater, Texas	20.00	— —	25.00	26.00	22.00	— —	50.00	13.00	15.00	15.00	16.25

Note: 5/16" Gypsum Wallboard is for sale to manufacturers only, for fabrication at their factories—not a dealer item.

9883 #Where an odd 'rate per ton' is in effect (example: $3.45 per ton) the freight per M sq. ft. shall be figured on basis of rate per cwt. nearest to rate per ton, fractions of less than 1/4¢ per cwt. to be dropped, fractions of 1/4¢ per cwt. to 1/2¢ per cwt. to be considered as 1/2¢. Example: The rate of $3.45 per ton equals 17¼¢ per cwt. For purpose of arriving at delivered price, however, the rate of 17½¢ shall be used.

†(*) Prices f.o.b. cars Boston, Mass., New Brighton, N. Y. and Philadelphia, Pa. apply for shipments into the following area only: States of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Maryland, Delaware and Virginia; the District of Columbia; that portion of Pennsylvania east of and including Potter, Cameron, Clinton, Center, Mifflin, Juniata, Perry, Franklin and Fulton Counties; also Morgan, Berkeley and Jefferson Counties, West Virginia.

†Stopover, Switching and Other Extra Delivery Charges:

All stopover charges, switching charges and other extra delivery charges will be paid by customers. Exception: Stopover charges need not be included on shipments into the states of Michigan, Wisconsin, Illinois, Indiana, Ohio, Kansas, Missouri, Arkansas, Oklahoma, Iowa, Minnesota, North Dakota, South Dakota, Texas, Nebraska, Kentucky, Montana, Colorado and Wyoming; also stopover charges need not be included on shipments to destinations within any Gypsum Board Del'd Price Area wherein minimum prices of patented gypsum board products delivered by truck are same as minimum prices for deliveries in carloads by rail.

The above prices apply to the sale of all board embodying the claims of our patents in all markets except where an exception is made as hereinafter expressly stated:

(1) Until further notice the above minimum prices shall not apply to sales of patented gypsum board products for shipment to or delivery in the following area: States of California, Arizona, Nevada, Utah, Idaho, Oregon and Washington, also that portion of State of Montana west of and including Phillips, Petroleum, Musselshell, Yellowstone and Carbon Counties.

†(2) Plaster Lath Exceptions:

†(a) The minimum price of 3/8" patented gypsum plaster lath, in straight and pool carloads, or in mixed carloads with other gypsum products is $16.00 per M sq. ft.

f.o.b. cars delivered to dealers warehouse or siding in Palm Beach, Dade, Broward and Monroe Counties, Florida.

†(3) Delivered Price Areas:

Prices of patented gypsum board products, in straight and pool cars or in mixed cars with other gypsum products, f.o.b. cars delivered to dealers warehouse or siding within areas listed below are as follows:

9884 Delivered Prices Into:	1/4" Gypsum Wallboard	3/8" Gypsum Wallboard	1/2" Gypsum Wallboard	1/2" Gypsum Sheathing	3/8" Tiled Gypsum Wallboard	3/8" Gypsum Plaster Lath†	1/4" Gypsum Liner Board†	3/8" Gypsum Liner Board†	1/2" Gypsum Liner Board†
†(a) Essex, Middlesex, Suffolk and Norfolk Counties, Mass., that portion of Plymouth County, Mass. north of continuation of southern boundary of Norfolk County, and town of Mansfield, Mass.; also Manhattan, Bronx, Kings, Queens, Richmond and Nassau Counties, New York; also Hudson, Essex, Bergen, Passaic, Union, Morris, Somerset, Middlesex, Monmouth, Mercer and Camden Counties, New Jersey; also that portion of Burlington County, N. J. west of line extending from the southwest corner of Monmouth County to the northeast corner of Camden County; also Bucks, Montgomery, Chester, Delaware and Philadelphia Counties, Penna.:	20.70	25.00	26.45	23.45	51.00	14.00	15.70	16.00	17.70
†(b) Balance of Plymouth County, Mass., Bristol County, Mass. (except town of Mansfield), Worcester and Barnstable Counties, Mass.; also State of Rhode Island; also Fairfield County, Connecticut; also Orange and Putnam Counties, New York; also Sussex, Warren, Hunterdon, Ocean, Atlantic, Cape May, Cumberland, Salem and Gloucester Counties, New Jersey; also that portion of Burlington County, N. J. east of line extending from the southwest corner of Monmouth County to the northeast corner of Camden County; also New Castle County, Delaware; also Lehigh, Northampton, Berks and Lancaster Counties, Penna.:	20.95	25.40	26.90	23.90	51.40	14.40	15.95	16.40	18.15
†(c) Westchester, Rockland and Suffolk Counties, New York:	20.85	25.25	26.65	23.65	51.25	14.25	15.85	16.25	17.90
†(d) State of Connecticut (except Fairfield and Litchfield Counties):	21.05	25.60	27.15	24.15	51.60	14.60	16.05	16.60	16.40
†(e) Sullivan, Ulster and Dutchess Counties, New York and Litchfield County, Connecticut:	21.20	25.75	27.40	24.40	51.75	14.75	16.20	16.75	18.65
†(f) Delaware, Greene and Columbia Counties, New York:	21.45	26.10	27.85	24.85	52.10	15.10	16.45	17.10	19.10
†(g) Niagara and Erie Counties, New York (including town of Gowanda):	20.70	26.00	27.35	23.35	51.00	14.00	15.70	16.00	17.60

9885 Delivered Prices Into:	1/4" Gypsum Wallboard	3/8" Gypsum Wallboard	1/2" Gypsum Wallboard	1/2" Gypsum Sheathing	3/8" Tiled Gypsum Wallboard	3/8" Gypsum Plaster Lath†	1/4" Gypsum Liner Board†	3/8" Gypsum Liner Board†	1/2" Gypsum Liner Board†
†(h) Du Page Counties, Illinois; Lake County, Indiana; and towns of Deerfield, Highland Park and Lake Forest, Illinois:	20.35	25.50	26.70	22.70	50.50	13.50	15.35	15.50	16.95
†(i) McHenry, Kane and Lake Counties, Illinois (except towns of Deerfield, Highland Park and Lake Forest):	20.50	25.70	26.95	22.95	50.70	13.70	15.50	15.70	17.20
†(j) Wayne County, Michigan; towns of Birmingham, Clawson, Farmington, Ferndale, Hazel Park and Royal Oak in Oakland County, Michigan; and towns of Warren, Halfway, Fraser, Roseville, Saint Clair Shores, East Detroit and Centerline in Macomb County, Michigan:	20.70	26.00	27.45	23.45	51.00	14.00	15.70	16.00	17.70
†(k) Grand Rapids, Mich. Switching Area (as described in published railroad tariffs):	21.00	26.00	27.00	23.00	51.00	14.00	16.00	16.00	17.25

†(4) 32"x48" Gypsum Board, if grey surfaced and round edged, is subject to the minimum liner board price, to any destination. Square edge or cutstock board in size 32"x48" is subject to the minimum wallboard price, except where used for specific roof jobs only, size 32"x48" cutstock board is subject to the minimum liner board price for such specific jobs.

†(5) 36"x48" Gypsum Board. 36"x48" is standard liner board size in all states for use on specific gypsum roof jobs only and is subject to minimum liner board price for such specific gypsum roof jobs.

(6) Delivered carload minimum prices in markets as listed are same as in adjacent cities, as indicated below:

Delivered Carload Minimum Prices in—	*Same as—*
College Park, Ga.	Atlanta, Ga.
Elkridge and Glen Burnie, Maryland	Baltimore, Md.
Bristol, Tenn.	Bristol, Va.
Cheviot & Bridgetown, O.	Cincinnati, O.
Euclid, North Randall & Bedford, O.	Cleveland, O.
Dodson and Edgecomb, Mo.; Rosedale, Waldo, Argentine, Westport, Overland Park & Kansas City, Kansas	Kansas City, Mo.
Saint Louis County and town of Imperial (in Jefferson County), Missouri	St. Louis, Mo.
Armory, Indian Orchard, Oak Street & Chicopee, Mass.	Springfield, Mass.
South Windham, Maine	Portland, Maine
Gabe, Shepard and Wilmont, Okla.	Okla. City, Okla.
Rosslyn, Virginia	Washington, D. C.
Omaha, Nebraska	Council Bluffs, Ia.
Moline, East Moline and Rock Island, Illinois	Davenport, Iowa
Virginia Beach, Virginia	Norfolk, Va.

9886 Sales to contractors and prefabricated house manufacturers, also extras on odd sizes:

(a) On sales of standard sizes to contractors, roofing contractors, metal ceiling contractors and prefabricated house manufacturers, add differentials per M sq. ft. as follows: (Note: Sales to roofing contractors are for specific roof jobs only):

To Contractors (Incl. Metal Ceiling Contrs.) & to Prefabricated House Mfrs. Std. Sizes		To Roofing Contractors Std. Sizes	
Wall Bd. & Sheathing	Lath & Liner	Wall Bd. & Sheathing	Lath & Liner
2.50	1.25	1.25	1.25

(b) On sales of odd sizes to dealers, contractors, roofing contractors, metal ceiling contractors and prefabricated house manufacturers, add differentials per M sq. ft. as follows: (Note: Sales to roofing contractors are for specific roof jobs only):

To Dealers Odd Sizes		To Contractors (Incl. Metal Ceiling Contrs.) & to Prefabricated House Mfrs. Odd Sizes		To Roofing Contractors Odd Sizes	
Wall Bd. & Sheathing	Lath & Liner	Wall Bd. & Sheathing	Lath & Liner	Wall Bd. & Sheathing	Lath & Liner
2.50	1.25	5.00	2.50	1.25	1.25

Yours very truly,

UNITED STATES GYPSUM COMPANY,

———— ————, *Vice President.*

† Indicates change in this reissue.

9887 (3) Delivered Price Areas: (Cont'd)

Delivered Prices Into:	1/4" Gypsum Wallboard	3/8" Gypsum Wallboard	1/2" Gypsum Wallboard	1/2" Gypsum Sheathing	3/8" Tiled Gypsum Wallboard	3/8" Gypsum Plaster Lath	1/4" Gypsum Liner Board	3/8" Gypsum Liner Board	1/2" Gypsum Liner Board
†(h) Cook and Du Page Counties, Illinois; Lake County, Indiana; and towns of Deerfield, Highland Park, Blodgett, Briergate and Lake Forest, in Lake County, Illinois:	20.35	25.50	26.70	*22.70	50.50	13.50	15.35	15.50	16.95
†(i) McHenry, Kane and Lake Counties, Illinois (except towns of Deerfield, Highland Park, Blodgett, Briergate and Lake Forest):	20.50	25.70	26.95	22.95	50.70	13.70	15.50	15.70	17.20
(j) Wayne County, Michigan; towns of Birmingham, Clawson, Farmington, Ferndale, Hazel Park and Royal Oak in Oakland County, Michigan; and towns of Warren, Halfway, Fraser, Roseville, Saint Clair Shores, East Detroit and Centerline in Macomb County, Michigan:	20.70	26.00	27.45	23.45	51.00	14.00	15.70	16.00	17.70
(k) Grand Rapids, Mich. Switching Area (as described in published railroad tariffs):	21.00	26.00	27.00	23.00	51.00	14.00	16.00	16.00	17.25

(4) 32"x48" Gypsum Board. If grey surfaced and round edged, is subject to the minimum liner board price, to any destination. Square edge or cutstock board in size 32"x48" is subject to the minimum wallboard price, except where used for specific roof jobs only, size 32"x48" cutstock board is subject to the minimum liner board price for such specific jobs.

(5) 36"x48" Gypsum Board. 36"x48" is standard liner board size in all states for use on specific gypsum roof jobs only and is subject to minimum liner board price for such specific gypsum roof jobs.

(6) Delivered carload minimum prices in markets as listed are same as in adjacent cities, as indicated below:

Delivered Carload Minimum Prices In—	*Same as—*
College Park, Ga.	Atlanta, Ga.
Elkridge and Glen Burnie, Maryland	Baltimore, Md.
Bristol, Tenn.	Bristol, Va.
Cheviot & Bridgetown, O.	Cincinnati, O.
Euclid, North Randall & Bedford, O.	Cleveland, O.
Dodson and Edgecomb, Mo.; Rosedale, Waldo, Argentine, Westport, Overland Park and Kansas City, Kansas	Kansas City, Mo.
Saint Louis County and town of Imperial (in Jefferson County), Missouri	St. Louis, Mo.
Armory, Indian Orchard, Oak Street & Chicopee, Mass.	Springfield, Mass.
South Windham, Maine	Portland, Maine
Gabe, Shepard and Wilmont, Okla.	Okla. City, Okla.
Rosalyn, Virginia	Washington, D. C.
Omaha, Nebraska	Council Bluffs, Ia.
Moline, East Moline and Rock Island, Illinois	Davenport, Iowa
Virginia Beach, Virginia	Norfolk, Va.

9888 UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

MAY 7, 1937.

Carload Shipments
Board License Bulletin No. 1 (Page 1)—Cancels Page 1
Dated February 24, 1937

C. NEWMAN

DEAR SIRS: Referring to our license contract with you, you are hereby notified that effective May 11, 1937 the minimum prices at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent); including Haggerty patent number 1,500,452 and Hite patent number 1,230,297, are as follows:

Patented gypsum board products shall be quoted and sold on a delivered basis, f.o.b. cars destination. Delivered price is lowest combination of mill price plus freight from that mill to destination (See Note # page 2). In stopover cars delivered price for any part of car is carload delivered price as above defined to point of delivery of that part of car. Rates as shown in published freight tariffs, with exceptions as provided for in this bulletin. To determine board footage required to meet straight or mixed carload minimum weights, as shown in published freight tariffs, use weights per M sq. ft. as shown below:

Dealer Prices f.o.b. cars: (Applying for Standard Sizes as Listed in Bulletin No. 4)	1/4" Gypsum Wallboard (Wt. 950# per M)	5/16" Gypsum Wallboard (Wt. 1175# per M) See Note	3/8" Gypsum Wallboard (Wt. 1400# per M)	1/2" Gypsum Wallboard (Wt. 1900# per M)	1/2" Gypsum Sheathing (Wt. 1900# per M)	3/4" Gypsum Wallboard (Wt. 3300# per M)	3/8" Tiled Gypsum Wallbd (Wt. 1400# per M)	3/8" Gypsum Plaster Lath (Wt. 1400# per M)	1/2" Gypsum Plaster Lath (Wt. 1900# per M) †	1/4" Gypsum Liner Board (Wt. 950# per M)	3/8" Gypsum Liner Board (Wt. 1400# per M)	1/2" Gypsum Liner Board (Wt. 1900# per M)
Acme, Texas	20.00	— —	25.00	26.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
*Boston, Mass.	*20.00	— —	*24.00	*25.00	*22.00	— —	*50.00	*13.00	*15.00	*15.00	*15.00	*16.25
Detroit, Mich.	20.00	— —	25.00	26.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
East Chicago, Ind.	20.00	— —	25.00	26.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
Fort Dodge, Iowa	20.00	— —	25.00	26.00	22.00	36.50	50.00	13.00	15.00	15.00	15.00	16.25
Grand Rapids, Mich.	20.00	— —	25.00	26.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
Gypsum, Ohio	20.00	24.00	25.00	26.00	22.00	36.50	50.00	13.00	15.00	15.00	15.00	16.25
Heath, Montana	22.50	— —	25.00	26.00	32.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
Laramie, Wyo.	24.00	— —	30.75	— —	— —	— —	55.75	18.75	— —	— —	20.75	— —
Loveland, Colo.	23.75	— —	30.50	— —	— —	— —	55.50	18.50	— —	— —	20.50	— —
*N. Brighton, S. I., N. Y.	*20.00	— —	*24.00	*25.00	*22.00	— —	*50.00	*13.00	*15.00	*15.00	*15.00	*16.25
Oakfield, N. Y.	20.00	24.00	25.00	26.00	22.00	36.50	50.00	13.00	15.00	15.00	15.00	16.25
*Philadelphia, Pa.	*20.00	— —	*24.00	*25.00	*22.00	— —	*50.00	*13.00	*15.00	*15.00	*15.00	*16.25
Plasterco, Va.	20.00	— —	25.00	26.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
Southard, Okla.	20.00	— —	25.00	26.00	22.00	36.50	50.00	13.00	15.00	15.00	15.00	16.25
Sweetwater, Texas	20.00	— —	25.00	26.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25

Note: 5/16" Gypsum wallboard is for sale to manufacturers only, for fabrication at their factories—not a dealer item.

† Indicates changes.

9889 (3) Delivered Price Areas: (Cont'd)

Delivered Prices Into:	1/4" Gypsum Wallboard	3/8" Gypsum Wallboard	1/2" Gypsum Wallboard	1/2" Gypsum Sheathing	3/8" Tiled Gypsum Wallboard	3/8" Gypsum Plaster Lath	1/2" Gypsum Plaster Lath†	1/4" Gypsum Liner Board	3/8" Gypsum Liner Board	1/2" Gypsum Liner Board
(a) Essex, Middlesex, Suffolk and Norfolk Counties, Mass., that portion of Plymouth County, Mass. north of continuation of southern boundary of Norfolk County, and town of Mansfield, Mass.; also Manhattan, Bronx, Kings, Queens, Richmond and Nassau Counties, New York; also Hudson, Essex, Bergen, Passaic, Union, Morris, Somerset, Middlesex, Monmouth, Mercer and Camden Counties, New Jersey; also that portion of Burlington County, N. J. west of line extending from the southwest corner of Monmouth County to the northeast corner of Camden County; also Bucks, Montgomery, Chester, Delaware and Philadelphia Counties, Penna.:	20.70	25.00	26.45	23.45	51.00	14.00	16.45	15.70	16.00	17.70
(b) Balance of Plymouth County, Mass., Bristol County, Mass. (except town of Mansfield), Worcester and Barnstable Counties, Mass.; also State of Rhode Island; also Fairfield County, Connecticut; also Orange and Putnam Counties, New York; also Sussex, Warren, Hunterdon, Ocean, Atlantic, Cape May, Cumberland, Salem and Gloucester Counties, New Jersey; also that portion of Burlington County, N. J. east of line extending from the southwest corner of Monmouth County to the northeast corner of Camden County; also New Castle County, Delaware; also Lehigh, Northampton, Berks and Lancaster Counties, Penna.:	20.95	25.40	26.90	23.90	51.40	14.40	16.90	15.95	16.40	18.15
(c) Westchester, Rockland and Suffolk Counties, New York:	20.85	25.25	26.65	23.65	51.25	14.25	16.65	15.85	16.25	17.90
(d) State of Connecticut (except Fairfield and Litchfield Counties):	21.05	25.60	27.15	24.15	51.60	14.60	17.15	16.05	16.60	18.40
(e) Sullivan, Ulster and Dutchess Counties, New York and Litchfield County, Connecticut:	21.20	25.75	27.40	24.40	51.75	14.75	17.40	16.20	16.75	18.65
(f) Delaware, Greene and Columbia Counties, New York:	21.45	26.10	27.85	24.85	52.10	15.10	17.85	16.45	17.10	19.10
(g) Niagara and Erie Counties, New York (including town of Gowanda):	20.70	26.00	27.35	23.35	51.00	14.00	16.35	15.70	16.00	17.60

† Indicates changes (to become effective May 11, 1937).

9890 Delivered Prices Into:	1/4" Gypsum Wallboard	3/8" Gypsum Wallboard	1/2" Gypsum Wallboard	1/2" Gypsum Sheathing	3/8" Tiled Gypsum Wallboard	3/8" Gypsum Plaster Lath	1/2" Gypsum Plaster Lath†	1/4" Gypsum Liner Board	3/8" Gypsum Liner Board	1/2" Gypsum Liner Board
(h) Cook and Du Page Counties, Illinois; Lake County, Indiana; and towns of Deerfield, Highland Park, Blodgett, Briergate and Lake Forest, in Lake County, Illinois:	20.35	25.50	26.70	22.70	50.50	13.50	15.70	15.35	15.50	16.95
(i) McHenry, Kane and Lake Counties, Illinois (except towns of Deerfield, Highland Park, Blodgett, Briergate and Lake Forest):	20.50	25.70	26.95	22.95	50.70	13.70	15.95	15.50	15.70	17.20
(j) Wayne County, Michigan; towns of Birmingham, Clawson, Farmington, Ferndale, Hazel Park and Royal Oak in Oakland County, Michigan; and towns of Warren, Halfway, Fraser, Roseville, Saint Clair Shores, East Detroit and Centerline in Macomb County, Michigan.	20.70	26.00	27.45	23.45	51.00	14.00	16.45	15.70	16.00	17.70
(k) Grand Rapids, Mich., Switching Area (as described in published railroad tariffs):	21.00	26.00	27.00	23.00	51.00	14.00	16.00	16.00	16.00	17.25

(4) 32" x 48" Gypsum Board. If grey surfaced and round edged, is subject to the minimum liner board price, to any destination. Square edge or cutstock board in size 32" x 48" is subject to the minimum wallboard price, except where used for specific roof jobs only, size 32" x 48" cutstock board is subject to the minimum liner board price for such specific jobs.

(5) 36" x 48" Gypsum Board. 36" x 48" is standard liner board size in all states for use on specific gypsum roof jobs only and is subject to minimum liner board price for such specific gypsum roof jobs.

(6) Delivered Carload Minimum Prices in Markets as Listed Are Same as in Adjacent Cities, as Indicated Below:

Delivered Carload Minimum Prices in—	*Same as—*
College Park, Ga.	Atlanta, Ga.
Elkridge and Glen Burnie, Maryland	Baltimore, Md.
Bristol, Tenn.	Bristol, Va.
Cheviot & Bridgetown, O.	Cincinnati, O.
Euclid, North Randall & Bedford, O.	Cleveland, O.
Dodson and Edgecomb, Mo.; Rosedale, Waldo, Argentine, Westport, Overland Park and Kansas City, Kansas	Kansas City, Mo.
Saint Louis County and town of Imperial (in Jefferson County), Missouri	St. Louis, Mo.
Armory, Indian Orchard, Oak Street & Chicopee, Mass.	Springfield, Mass.
South Windham, Maine	Portland, Maine
Gabe, Shepard and Wilmont, Okla.	Okla. City, Okla.
Rosslyn, Virginia	Washington, D. C.
Omaha, Nebraska	Council Bluffs, Iowa
Moline, East Moline and Rock Island, Illinois	Davenport, Iowa
Virginia Beach, Virginia	Norfolk, Va.

† Indicates changes (to become effective May 11, 1937)

9891 UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

JUNE 12, 1937

Carload Shipments
Board License Bulletin No. 1 (Page 1)—Cancels Page 1
Dated May 7, 1937.

MR. C. NEWMAN,
Clerk,
General Sales.

DEAR SIRS: Referring to our license contract with you, you are hereby notified that effective June 17, 1937 the minimum prices at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent); including Haggerty patent number 1,500,452, are as follows:

Patented gypsum board products shall be quoted and sold on a delivered basis, f.o.b. cars destination. Delivered price is lowest combination of mill price plus freight from that mill to destination (See Note # page 2). In stopover cars delivered price for any part of car is carload delivered price as above defined to point of delivery of that part of car. Rates as shown in published freight tariffs, with exceptions as provided for in this bulletin. To determine board footage required to meet straight or mixed carload minimum weights, as shown in published freight tariffs, use weights per M sq. ft. as shown below:

Dealer Prices f.o.b. cars: (Applying for standard sizes as listed in Bulletin No. 4)	1/4" Gypsum Wallbd. (Wt. 950# per M)	3/8" Gypsum Wallbd. (Wt. 1400# per M) †	1/2" Gypsum Wallbd. (Wt. 1900# per M) †	1/2" Gypsum Sheathing (Wt. 1900# per M)	3/4" Gypsum Wallbd. (Wt. 3300# per M)	3/8" Tiled Gypsum Wallbd. (Wt. 1400# per M)	3/8" Gypsum Plaster Lath (Wt. 1400# per M)	1/2" Gypsum Plaster Lath (Wt. 1900# per M)	1/4" Gypsum Liner Board (Wt. 950# per M)	3/8" Gypsum Liner Board (Wt. 1400# per M)	1/2" Gypsum Liner Board (Wt. 1900# per M)
†Acme, Texas	20.00	23.00	25.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
†Boston, Mass.	20.00	23.00	25.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
†Detroit, Mich.	20.00	23.00	25.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
†East Chicago, Ind.	20.00	23.00	25.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
†Fort Dodge, Iowa	20.00	23.00	25.00	22.00	36.50	50.00	13.00	15.00	15.00	15.00	16.25
†Grand Rapids, Mich.	20.00	23.00	25.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
†Gypsum, Ohio	20.00	23.00	25.00	22.00	36.50	50.00	13.00	15.00	15.00	15.00	16.25
†Heath, Montana	22.50	23.00	25.00	32.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
†Laramie, Wyo.	24.00	28.75	— —	— —	— —	55.75	18.75	— —	— —	20.75	— —
†Loveland, Colo.	23.75	28.50	— —	— —	— —	55.50	18.50	— —	— —	20.50	— —
†National City, Mich.	20.00	23.00	25.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
†New Brighton, S. I., N. Y.	20.00	23.00	25.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
†Oakfield, N. Y.	20.00	23.00	25.00	22.00	36.50	50.00	13.00	15.00	15.00	15.00	16.25
†*Philadelphia, Pa.	*20.00	*23.00	*25.00	*22.00	— —	*50.00	*13.00	*15.00	*15.00	*15.00	*16.25
†Plasterco, Va.	20.00	23.00	25.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
†Southard, Okla.	20.00	23.00	25.00	22.00	36.50	50.00	13.00	15.00	15.00	15.00	16.25
†Sweetwater, Texas	20.00	23.00	25.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25

9892 #Where an odd 'rate per ton' is in effect (example: $3.45 per ton) the freight per M sq. ft. shall be figured on basis of rate per cwt. nearest to rate per ton, fractions of less than 1/4¢ per cwt. to be dropped, fractions of 1/4¢ per cwt. to 1/2¢ per cwt. to be considered as 1/2¢. Example: The rate of $3.45 per ton equals 17¼¢ per cwt. For purpose of arriving at delivered price, however, the rate of 17½¢ shall be used.

†(*) Prices f.o.b. cars Philadelphia, Pa: apply for shipments into the following area only: States of New York, New Jersey, Maryland, Delaware and Virginia; The District of Columbia; that portion of Pennsylvania east of and including Potter, Cameron, Clinton, Center, Mifflin, Juniata, Perry, Franklin and Fulton Counties; also Morgan, Berkeley and Jefferson Counties, West Virginia.

Stopover, Switching and Other Extra Delivery Charges:

All stopover charges, switching charges and other extra delivery charges will be paid by customers. Exception: Stopover charges need not be included on shipments into the states of Michigan, Wisconsin, Illinois, Indiana, Ohio, Kansas, Missouri, Arkansas, Oklahoma, Iowa, Minnesota, North Dakota, South Dakota, Texas, Nebraska, Kentucky, Montana, Colorado and Wyoming; also stopover charges need not be included on shipments to destinations within any Gypsum Board Del'd Price Area wherein minimum prices of patented gypsum board products delivered by truck are same as minimum prices for deliveries in carloads by rail.

The above prices apply to the sale of all board embodying the claims of our patents in all markets except where an exception is made as hereinafter expressly stated:

(1) Until further notice the above minimum prices shall not apply to sales of patented gypsum board products for shipment to or delivery in the following area: States of California, Arizona, Nevada, Utah, Idaho, Oregon and Washington, also that portion of State of Montana west of and including Phillips, Petroleum, Musselshell, Yellowstone and Carbon Counties.

(2) Plaster Lath Exceptions:

(a) The minimum price of 3/8" patented gypsum plaster lath, in straight and pool carloads, or in mixed carloads with other gypsum products is $16.00 per M sq. ft. f.o.b. cars delivered to dealers warehouse or siding in Palm Beach, Dade, Broward and Monroe Counties, Florida.

(3) Delivered Price Areas:

Prices of patented gypsum board products, in straight and pool cars or in mixed cars with other gypsum products, f.o.b. cars delivered to dealers warehouse or siding within areas listed below are as follows:

9893 Delivered Prices Into:	1/4" Gypsum Wallboard	3/8" Gypsum Wallboard	1/2" Gypsum Wallboard	1/2" Gypsum Sheathing	3/8" Tiled Gypsum Wallboard	3/8" Gypsum Plaster Lath	1/2" Gypsum Plaster Lath	1/4" Gypsum Liner Board	3/8" Gypsum Liner Board	1/2" Gypsum Liner Board
(a) Essex, Middlesex, Suffolk and Norfolk Counties, Mass., that portion of Plymouth County, Mass. north of continuation of southern boundary of Norfolk County, and town of Mansfield, Mass.; also Manhattan, Bronx, Kings, Queens, Richmond and Nassau Counties, New York; also Hudson, Essex, Bergen, Passaic, Union, Morris, Somerset, Middlesex, Monmouth, Mercer and Camden Counties, New Jersey; also that portion of Burlington County, N. J. west of line extending from the southwest corner of Monmouth County to the northeast corner of Camden County; also Bucks, Montgomery, Chester, Delaware and Philadelphia Counties, Penna.:										
†	20.70	24.00†	26.45	23.45	51.00	14.00	16.45	15.70	16.00	17.70
(b) Balance of Plymouth County, Mass., Bristol County, Mass. (except town of Mansfield), Worcester and Barnstable Counties, Mass.; also State of Rhode Island; also Fairfield County, Connecticut; also Orange and Putnam Counties, New York; also Sussex, Warren, Hunterdon, Ocean, Atlantic, Cape May, Cumberland, Salem and Gloucester Counties, New Jersey; also that portion of Burlington County, N. J. east of line extending from the southwest corner of Monmouth County to the northeast corner of Camden County; also New Castle County, Delaware; also Lehigh, Northampton, Berks and Lancaster Counties, Penna.:										
†	20.95	24.40†	26.90	23.90	51.40	14.40	16.90	15.95	16.40	18.15
(c) Westchester, Rockland and Suffolk Counties, New York:										
†	20.85	24.25†	26.65	23.65	51.25	14.25	16.65	15.85	16.25	17.90
(d) State of Connecticut (except Fairfield and Litchfield Counties):										
†	21.05	24.60†	27.15	24.15	51.60	14.60	17.15	16.05	16.60	18.40
(e) Sullivan, Ulster and Dutchess Counties, New York and Litchfield County, Connecticut:										
†	21.20	24.75†	27.40	24.40	51.75	14.75	17.40	16.20	16.75	18.65
(f) Delaware, Greene and Columbia Counties, New York:										
†	21.45	25.10†	27.85	24.85	52.10	15.10	17.85	16.45	17.10	19.10
(g) Niagara and Erie Counties, New York (including town of Gowanda):										
†	20.70	24.00†	26.35†	23.35	51.00	14.00	16.35	15.70	16.00	17.60
(h) Cook and Du Page Counties, Illinois; Lake County, Indiana; and towns of Deerfield, Highland Park, Blodgett, Briergate and Lake Forest, in Lake County, Illinois:										
†	20.35	23.50†	25.70†	22.70	50.50	13.50	15.70	15.35	15.50	16.95

9894 Delivered Prices Into:	1/4" Gypsum Wallboard	3/8" Gypsum Wallboard	1/2" Gypsum Wallboard	1/2" Gypsum Sheathing	3/8 Tiled Gypsum Wallboard	3/8" Gypsum Plaster Lath	1/2" Gypsum Plaster Lath	1/4" Gypsum Liner Board	3/8" Gypsum Liner Board	1/2" Gypsum Liner Board
(i) McHenry, Kane and Lake Counties, Illinois (except towns of Deerfield, Highland Park, Blodgett, Briergate and Lake Forest):	20.50	†23.70	†25.95	22.95	50.70	13.70	15.95	15.50	15.70	17.20
(j) Wayne County, Michigan; towns of Birmingham, Clawson, Farmington, Ferndale, Hazel Park and Royal Oak in Oakland County, Michigan; and towns of Warren, Halfway, Fraser, Roseville, Saint Clair Shores, East Detroit and Centerline in Macomb County, Michigan. †	20.70	24.00†	26.45†	23.45	51.00	14.00	16.45	15.70	16.00	17.70
(k) Grand Rapids, Mich., Switching Area (as described in published railroad tariffs): †	21.00	24.00†	26.00†	23.00	51.00	14.00	16.00	16.00	16.00	17.25

(4) 32" x 48" Gypsum Board. If grey surfaced and round edged, is subject to the minimum liner board price, to any destination. Square edge or cutstock board in size 32" x 48" is subject to the minimum wallboard price, except where used for specific roof jobs only, size 32" x 48" cutstock board is subject to the minimum liner board price for such specific jobs.

(5) 36"x 48" Gypsum Board. 36" x 48" is standard liner board sizes in all states for use on specific gypsum roof jobs only and is subject to minimum liner board price for such specific gypsum roof jobs.

†(6) Delivered Carload Minimum Prices in Markets as Listed Are Same as in Adjacent Cities, as Indicated Below:

Delivered Carload Minimum Prices In—	*Same as—*
College Park, Ga.	Atlanta, Ga.
†Elkridge, Glen Burnie, Catsonville, Riderwood and Towson, Maryland	Baltimore, Md.
Bristol, Tenn.	Bristol, Va.
†Cheviot, Bridgetown and North College Hill, Ohio	Cincinnati, O.
Euclid, North Randall & Bedford, Ohio	Cleveland O.
Dodson & Edgecomb, Mo.; Rosedale, Waldo, Argentine, Westport, Overland Park and Kansas City, Kansas	Kansas City, Mo.
Saint Louis County and town of Imperial (in Jefferson County), Missouri	St. Louis, Mo.
Armory, Indian Orchard, Oak Street & Chicopee, Mass.	Springfield, Mass.
South Windham, Maine	Portland, Maine
Gabe, Shepard and Wilmont, Okla.	Okla. City, Okla.
†Rosslyn, and Lacey, Virginia	Washington, D. C.
Omaha, Nebraska	Council Bluffs, Iowa
Moline, East Moline and Rock Island, Illinois	Davenport, Iowa
Virginia Beach, Virginia	Norfolk, Va.

9895 Sales to Contractors and Prefabricated House Manufacturers, also Extras on Odd Sizes:

(a) On sales of standard sizes to contractors, roofing contractors, metal ceiling contractors and prefabricated house manufacturers, add differentials per sq. ft. as follows: (Note: Sales to roofing contractors are for specific roof jobs only):

To Contractors (Incl. Metal Ceiling Contrs.) and to Prefabricated House Mfrs. Std. Sizes		To Roofing Contractors Std. Sizes	
Wall Bd. & Sheathing	Lath & Liner	Wall Bd. & Sheathing	Lath & Liner
2.50	1.25	1.25	1.25

(b) On sales of odd sizes to dealers, contractors, roofing contractors, metal ceiling contractors and prefabricated house manufacturers, add differentials per M sq. ft. as follows: (Note: Sales to roofing contractors are for specific roof jobs only):

To Dealers Odd Sizes		To Contractors (Incl. Metal Ceiling Contrs.) & to Prefabricated House Mfrs. Odd Sizes		To Roofing Contractors Odd Sizes	
Wall Bd. & Sheathing	Lath & Liner	Wall Bd. & Sheathing	Lath & Liner	Wall Bd. & Sheathing	Lath & Liner
2.50	1.25	5.00	2.50	1.25	1.25

Yours very truly,
UNITED STATES GYPSUM COMPANY,
Vice President.

† Indicates changes in this reissue.

9896 UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

JULY 13, 1937.

Carload Shipments
Board License Bulletin No. 1 (Page 1)—Cancels Page 1
Dated June 12, 1937.

MR. C. NEWMAN,
General Sales,
Office.

DEAR SIRS: Referring to our license contract with you, you are hereby notified that effective July 16, 1937 the minimum prices at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent); including Haggerty patent number 1,500,452, are as follows:



Patented gypsum board products shall be quoted and sold on a delivered basis, f.o.b. cars destination. Delivered price is lowest combination of mill price plus freight from that mill to destination (See Note # page 2). In stopover cars delivered price for any part of car is carload delivered price as above defined to point of delivery of that part of car. Rates as shown in published freight tariffs, with exceptions as provided for in this bulletin. To determine board footage required to meet straight or mixed carload minimum weights, as shown in published freight tariffs, use weights per M sq. ft. as shown below:

Dealer Prices f.o.b. cars: (Applying for standard sizes as listed in Bulletin No. 4)	1/4" Gypsum Wallboard (Wt. 950 # per M)	3/8" Gypsum Wallboard (Wt. 1400 # per M)	1/2" Gypsum Wallboard (Wt. 1900 # per M)	1/2" Gypsum Sheathing (Wt. 1900 # per M)	3/4" Gypsum Wallboard (Wt. 3300 # per M)	3/8" Tiled Gypsum Wallbd. (Wt. 1400 # per M)	3/8" Gypsum Plaster Lath (Wt. 1400 # per M)	1/2" Gypsum Plaster Lath (Wt. 1900 # per M)	1/4" Gypsum Liner Board (Wt. 950 # per M)	3/8" Gypsum Liner Board (Wt. 1400 # per M)	1/2" Gypsum Liner Board (Wt. 1900 # per M)
Acme, Texas	20.00	23.00	25.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
Boston, Mass.	20.00	23.00	25.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
Detroit, Mich.	20.00	23.00	25.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
East Chicago, Ind.	20.00	23.00	25.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
Fort Dodge, Iowa	20.00	23.00	25.00	22.00	36.50	50.00	13.00	15.00	15.00	15.00	16.25
Grand Rapids, Mich.	20.00	23.00	25.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
Gypsum, Ohio	20.00	23.00	25.00	22.00	36.50	50.00	13.00	15.00	15.00	15.00	16.25
†Heath, Montana	22.50	23.00	25.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
Laramie, Wyo.	24.00	28.75	— —	— —	— —	55.75	18.75	— —	— —	20.75	— —
Loveland, Colo.	23.75	28.50	— —	— —	— —	55.50	18.50	— —	— —	20.50	— —
National City, Mich.	20.00	23.00	25.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
New Brighton, S. I., N. Y.	20.00	23.00	25.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
Oakfield, N. Y.	20.00	23.00	25.00	22.00	36.50	50.00	13.00	15.00	15.00	15.00	16.25
*Philadelphia, Pa.	*20.00	*23.00	*25.00	*22.00	— —	*50.00	*13.00	*15.00	*15.00	*15.00	*16.25
Plasterco, Va.	20.00	23.00	25.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
Southard, Okla.	20.00	23.00	25.00	22.00	36.50	50.00	13.00	15.00	15.00	15.00	16.25
Sweetwater, Texas	20.00	23.00	25.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25

4830

9897 UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

OCTOBER 21, 1937

Carload Shipments
Board License Bulletin No. 1 (Page 1)—Cancels Page 1
Dated July 13, 1937.

MR. C. NEWMAN
Chicago Office

DEAR SIR: Referring to our license contract with you, you are hereby notified that effective November 1, 1937 the minimum prices at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent), including Haggerty patent number 1,500,452, are as follows:

Patented gypsum board products shall be quoted and sold on a delivered basis, f.o.b. cars destination. Delivered price is lowest combination of mill price plus freight from that mill to destination (See Note # page 2). In stopover cars delivered price for any part of car is carload delivered price as above defined to point of delivery of that part of car. Rates as shown in published freight tariffs, with exceptions as provided for in this bulletin. To determine board footage required to meet straight or mixed carload minimum weights, as shown in published freight tariffs, use weights per M sq. ft. as shown below:

Dealer Prices f.o.b. cars: (Applying for standard sizes as listed in Bulletin No. 4)	1/4" Gypsum Wallboard (Wt. 1050 # per M) †	3/8" Gypsum Wallboard (Wt. 1475 # per M) †	1/2" Gypsum Wallboard (Wt. 2000 # per M) †	1/2" Gypsum Sheathing (Wt. 2000 # per M) †	3/4" Gypsum Wallboard (Wt. 3300 # per M)	3/8" Tiled Gypsum Wallbd. (Wt. 1475 # per M) †	3/8" Gypsum Plaster Lath (Wt. 1475 # per M) †	1/2" Gypsum Plaster Lath (Wt. 2000 # per M) †	1/4" Gypsum Liner Board (Wt. 1050 # per M) †	3/8" Gypsum Liner Board (Wt. 1475 # per M) †	1/2" Gypsum Liner Board (Wt. 2000 # per M) †
Acme, Texas	20.00	23.00	25.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
Boston, Mass.	20.00	23.00	25.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
Detroit, Mich.	20.00	23.00	25.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
East Chicago, Ind.	20.00	23.00	25.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
Fort Dodge, Iowa	20.00	23.00	25.00	22.00	36.50	50.00	13.00	15.00	15.00	15.00	16.25
Grand Rapids, Mich.	20.00	23.00	25.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
Gypsum, Ohio	20.00	23.00	25.00	22.00	36.50	50.00	13.00	15.00	15.00	15.00	16.25
Heath, Montana	22.50	23.00	25.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
†Laramie, Wyo.	24.10	28.75	— —	— —	— —	55.75	18.75	— —	— —	20.75	— —
†Loveland, Colo.	24.10	28.75	— —	— —	— —	55.75	18.75	— —	— —	20.75	— —
National City, Mich.	20.00	23.00	25.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.
New Brighton, S. I., N. Y.	20.00	23.00	25.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
Oakfield, N. Y.	20.00	23.00	25.00	22.00	36.50	50.00	13.00	15.00	15.00	15.00	16.25
*Philadelphia, Pa.	*20.00	*23.00	*25.00	*22.00	— —	*50.00	*13.00	*15.00	*15.00	*15.00	*16.25
Plasterco, Va.	20.00	23.00	25.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
Southard, Okla.	20.00	23.00	25.00	22.00	36.50	50.00	13.00	15.00	15.00	15.00	16.25
Sweetwater, Texas	20.00	23.00	25.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25

† Note changes in weights.

9898 #Where an odd 'rate per ton' is in effect (example: $3.45 per ton) the freight per M sq. ft. shall be figured on basis of rate per cwt. nearest to rate per ton, fractions of less than 1/4¢ per cwt. to be dropped, fractions of 1/4¢ per cwt. to 1/2¢ per cwt. to be considered as 1/2¢. Example: The rate of $3.45 per ton equals 17¼¢ per cwt. For purpose of arriving at delivered price, however, the rate of 17½¢ shall be used.

*Prices f.o.b. cars Philadelphia, Pa. apply for shipments into the following area only: States of New York, New Jersey, Maryland, Delaware and Virginia; The District of Columbia; that portion of Pennsylvania east of and including Potter, Cameron, Clinton, Center, Mifflin, Juniata, Perry, Franklin and Fulton Counties; also Morgan, Berkeley and Jefferson Counties, West Virginia.

†Stopover, Switching and Other Extra Delivery Charges:

All stopover charges, switching charges and other extra delivery charges will be paid by customers; that is to say, in arriving at the minimum price all such charges must be added. Exception: Stopover charges need not be included on shipments to destinations within any Gypsum Board Del'd Price Area wherein minimum prices of patented gypsum board products delivered by truck are same as minimum prices for deliveries in carloads by rail.

The above prices apply to the sale of all board embodying the claims of our patents in all markets except where an exception is made as hereinafter expressly stated:

(1) Until further notice the above minimum prices shall not apply to sales of patented gypsum board products for shipment to or delivery in the following area: States of California, Arizona, Nevada, Utah, Idaho, Oregon and Washington, also that portion of State of Montana west of and including Phillips, Petroleum, Musselshell, Yellowstone and Carbon Counties.

(2) Plaster Lath Exceptions:

(a) The minimum price of 3/8" patented gypsum plaster lath, in straight and pool carloads, or in mixed carloads with other gypsum products is $16.00 per M sq. ft. f.o.b. cars delivered to dealers warehouse or siding in Palm Beach, Dade, Broward and Monroe Counties, Florida.

(3) Delivered Price Areas:

Prices of patented gypsum board products, in straight and pool cars or in mixed cars with other gypsum products, f.o.b. cars delivered to dealers warehouse or siding within areas listed below are as follows:

9899 Delivered Prices Into:	1/4" Gypsum Wallboard	3/8" Gypsum Wallboard	1/2" Gypsum Wallboard	1/2" Gypsum Sheathing	3/8" Tiled Gypsum Wallboard	3/8" Gypsum Plaster Lath	1/2" Gypsum Plaster Lath	1/4" Gypsum Liner Board	3/8" Gypsum Liner Board	1/2" Gypsum Liner Board
(a) Essex, Middlesex, Suffolk and Norfolk Counties, Mass., that portion of Plymouth County, Mass. north of continuation of Southern boundary of Norfolk County, and town of Mansfield, Mass.; also Manhattan, Bronx, Kings, Queens, Richmond and Nassau Counties, New York; also Hudson, Essex, Bergen, Passaic, Union, Morris, Somerset, Middlesex, Monmouth, Mercer and Camden Counties, New Jersey; also that portion of Burlington County, N. J. west of line extending from the southwest corner of Monmouth County to the northeast corner of Camden County; also Bucks, Montgomery, Chester, Delaware and Philadelphia Counties, Penna.:										
†	20.80†	24.10†	26.50†	23.50†	51.10†	14.10†	16.50†	15.80†	16.10†	17.75†
(b) Balance of Plymouth County, Mass., Bristol County, Mass. (except town of Mansfield), Worcester and Barnstable Counties, Mass.; also State of Rhode Island; also Fairfield County, Connecticut; also Orange and Putnam Counties, New York; also Sussex, Warren, Hunterdon, Ocean, Atlantic, Cape May, Cumberland, Salem and Gloucester Counties, New Jersey; also that portion of Burlington County, N. J. east of line extending from the southwest corner of Monmouth County to the northeast corner of Camden County; also New Castle County, Delaware; also Lehigh, Northampton, Berks and Lancaster Counties, Penna.:										
†	21.05†	24.50†	27.00†	24.00†	51.50†	14.50†	17.00†	16.05†	16.50†	18.25†
(c) Westchester, Rockland and Suffolk Counties, New York:										
†	20.90†	24.30†	26.75†	23.75†	51.30†	14.30†	16.75†	15.90†	16.30†	18.00†
(d) State of Connecticut (except Fairfield and Litchfield Counties):										
†	21.20†	24.65†	27.25†	24.25†	51.65†	14.65†	17.25†	16.20†	16.65†	18.50†
(e) Sullivan, Ulster and Dutchess Counties, New York and Litchfield County, Connecticut:										
†	21.30†	24.85†	27.50†	24.50†	51.85†	14.85†	17.50†	16.30†	16.85†	18.75†
(f) Delaware, Greene and Columbia Counties, New York:										
†	21.60†	25.20†	28.00†	25.00†	52.20†	15.20†	18.00†	16.60†	17.20†	19.25†
(g) Niagara and Erie Counties, New York (including town of Gowanda):										
†	20.75†	24.05†	26.40†	22.40†	51.05†	14.05†	16.40†	15.75†	16.05†	17.65†
(h) Cook and Du Page Counties, Illinois; Lake County, Indiana; and towns of Deerfield, Highland Park, Blodgett, Briergate and Lake Forest, in Lake County, Illinois:										
†	20.40†	23.55†	25.75†	22.75†	50.55†	13.55†	15.75†	15.40†	15.55†	17.00†

9900	Delivered Prices Into:	1/4" Gypsum Wallboard	3/8" Gypsum Wallboard	1/2" Gypsum Wallboard	1/2" Gypsum Sheathing	3/8" Tiled Gypsum Wallboard	3/8" Gypsum Plaster Lath	1/2" Gypsum Plaster Lath	1/4" Gypsum Liner Board	3/8" Gypsum Liner Board	1/2" Gypsum Liner Board
(i)	McHenry, Kane and Lake Counties, Illinois (except towns of Deerfield, Highland Park, Blodgett, Briergate and Lake Forest):										
†		20.55†	23.75†	26.00†	23.00†	50.75†	13.75†	16.00†	15.55†	15.75†	17.25†
(j)	Wayne County, Michigan; towns of Birmingham, Clawson, Farmington, Ferndale, Hazel Park and Royal Oak in Oakland County, Michigan; and towns of Warren, Halfway, Fraser, Roseville, Saint Clair Shores, East Detroit, Van Dyke and Centerline in Macomb County, Michigan.										
†		20.80†	24.10†	26.50†	23.50†	51.10†	14.10†	16.50†	15.80†	16.10†	17.75†
(k)	Grand Rapids, Mich., Switching Area (as described in published railroad tariffs):										
		21.00	24.00	26.00	23.00	51.00	14.00	16.00	16.00	16.00	17.25

(4) 32"x48" Gypsum Board. If grey, surfaced and round edged, is subject to the minimum liner board price, to any destination. Square edge or cutstock board in size 32"x48" is subject to the minimum wallboard price; except where used for specific roof jobs only, size 32"x48" cutstock board is subject to the minimum liner board price for such specific jobs.

(5) 36"x48" Gypsum Board. 36"x48" is standard liner board size in all states for use on specific gypsum roof jobs only and is subject to minimum liner board price for such specific gypsum roof jobs.

(6) Delivered carload minimum prices in markets as listed are same as in adjacent cities, as indicated below:

Delivered Carload Minimum Prices In—	*Same as—*
College Park, Ga.	Atlanta, Ga.
Elkridge, Glen Burnie, Catonsville, Riderwood and Towson, Maryland	Baltimore, Md.
Bristol, Tenn.	Bristol, Va.
Cheviot, Bridgetown and North College Hill, Ohio	Cincinnati, O.
Euclid, North Randall & Bedford, Ohio	Cleveland, O.
Dodson & Edgecomb, Mo.; Rosedale, Waldo, Argentine, Westport, Overland Park and Kansas City, Kansas	Kansas City, Mo.
Saint Louis County and town of Imperial (in Jefferson County), Missouri	St. Louis, Mo.
Armory, Indian Orchard, Oak Street & Chicopee, Mass.	Springfield, Mass.
South Windham, Maine	Portland, Maine
Gabe, Shepard and Wilmont, Okla.	Okla. City, Okla.
Rosslyn, and Lacey, Virginia	Washington, D. C.
Omaha, Nebraska	Council Bluffs, Ia.
Moline, East Moline and Rock Island, Illinois	Davenport, Iowa
Virginia Beach, Virginia	Norfolk, Va.

9901 Sales to contractors and prefabricated house manufacturers, also extras on odd sizes:

(a) On sales of standard sizes to contractors, roofing contractors, metal ceiling contractors and prefabricated house manufacturers, add differentials per M sq. ft. as follows: (Note: Sales to roofing contractors are for specific roof jobs only):

To Contractors (Incl. Metal Ceiling Contrs.) & to Prefabricated House Mfrs. Std. Sizes		To Roofing Contractors Std. Sizes	
Wall Bd. & Sheathing	Lath & Liner	Wall Bd. & Sheathing	Lath & Liner
2.50	1.25	1.25	1.25

(b) On sales of odd sizes to dealers, contractors, roofing contractors, metal ceiling contractors and prefabricated house manufacturers, add differentials per M sq. ft. as follows: (Note: Sales to roofing contractors are for specific roof jobs only):

To Dealers Odd Sizes		To Contractors (Inc. Metal Ceiling Contrs.) & to Prefabricated House Mfrs. Odd Sizes		To Roofing Contractors Odd Sizes	
Wall Bd. & Sheathing	Lath & Liner	Wall Bd. & Sheathing	Lath & Liner	Wall Bd. & Sheathing	Lath & Liner
2.50	1.25	5.00	2.50	1.25	1.25

Yours very truly,

UNITED STATES GYPSUM COMPANY

Vice President.

† Indicates changes in this reissue.

9902 UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

DECEMBER 17, 1937.

Carload Shipments
Board License Bulletin No. 1 (Page 1)---Cancels Page 1
Dated October 21, 1937.

MR. C. NEWMAN
Chicago.

DEAR SIR: Referring to our license contract with you, you are hereby notified that effective December 20, 1937 the minimum prices at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent); including Haggerty patent number 1,500,452, are as follows:

Patented gypsum board products shall be quoted and sold on a delivered basis, f.o.b. cars destination. Delivered price is lowest combination of mill price plus freight from that mill to destination (See Note # page 2). In stopover cars delivered price for any part of car is carload delivered price as above defined to point of delivery of that part of car. Rates as shown in published freight tariffs, with exceptions as provided for in this bulletin. To determine board footage required to meet straight or mixed carload minimum weights, as shown in published freight tariffs, use weights per M sq. ft. as shown below:

Dealer Prices f.o.b. cars: (Applying for standard sizes as listed in Bulletin No. 4)	1/4" Gypsum Wallboard (Wt. 1050 # per M)	3/8" Gypsum Wallboard (Wt. 1475 # per M)	1/2" Gypsum Wallboard (Wt. 2000 # Per M)	1/2" Gypsum Sheathing (Wt. 2000 # per M)	3/4" Gypsum Wallboard (Wt. 3300 # per M)	3/8" Tile Gypsum Wallbd. (Wt. 1475 # per M)	3/8" Gypsum Plaster Lath (Wt. 1475 # per M)	1/2" Gypsum Plaster Lath (Wt. 2000 # per M)	1/4" Gypsum Liner Board (Wt. 1050 # per M)	3/8" Gypsum Liner Board (Wt. 1475 # per M)	1/2" Gypsum Liner Board (Wt. 2000 # per M)
Acme, Texas	20.00	23.00	25.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
Boston, Mass.	20.00	23.00	25.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
Detroit, Mich.	20.00	23.00	25.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
East Chicago, Ind.	20.00	23.00	25.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
Fort Dodge, Iowa	20.00	23.00	25.00	22.00	36.50	50.00	13.00	15.00	15.00	15.00	16.25
Grand Rapids, Mich.	20.00	23.00	25.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
Gypsum, Ohio	20.00	23.00	25.00	22.00	36.50	50.00	13.00	15.00	15.00	15.00	16.25
Heath, Montana	22.50	23.00	25.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
†Laramie, Wyo.	24.35†	29.05†	— —	— —	— —	56.05†	19.05†	— —	— —	21.05†	— —
†Loveland, Colo.	24.35†	29.05†	— —	— —	— —	56.05†	19.05†	— —	— —	21.05†	— —
National City, Mich.	20.00	23.00	25.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
New Brighton, S. I., N. Y.	20.00	23.00	25.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
Oakfield, N. Y.	20.00	23.00	25.00	22.00	36.50	50.00	13.00	15.00	15.00	15.00	16.25
*Philadelphia, Pa.	*20.00	*23.00	*25.00	*22.00	— —	*50.00	*13.00	*15.00	*15.00	*15.00	*16.25
Plasterco, Va.	20.00	23.00	25.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
Southard, Okla.	20.00	23.00	25.00	22.00	36.50	50.00	13.00	15.00	15.00	15.00	16.25
Sweetwater, Texas	20.00	23.00	25.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25

† Denotes changes.

9903 (3) Delivered Price Areas: (Cont'd)

Delivered Prices Into:	1/4" Gypsum Wallboard	3/8" Gypsum Wallboard	1/2" Gypsum Wallboard	1/2" Gypsum Sheathing	3/8" Tiled Gypsum Wallboard	3/8" Gypsum Plaster Lath	1/2" Gypsum Plaster Lath	1/4" Gypsum Liner Board	3/8" Gypsum Liner Board	1/2" Gypsum Liner Board
(i) McHenry, Kane and Lake Counties, Illinois (except towns of Deerfield, Highland Park, Blodgett, Briergate and Lake Forest):	20.55	23.75	26.00	23.00	50.75	13.75	16.00	15.55	15.75	17.25
(j) Wayne County, Michigan; towns of Birmingham, Clawson, Farmington, Ferndale, Hazel Park and Royal Oak in Oakland County, Michigan; and towns of Warren, Halfway, Fraser, Roseville, Saint Clair Shores, East Detroit, Van Dyke and Centerline in Macomb County, Michigan.	20.80	24.10	26.50	23.50	51.10	14.10	16.50	15.80	16.10	17.75
(k) Grand Rapids, Mich., Switching Area (as described in published railroad tariffs):	21.00	24.00	26.00	23.00	51.00	14.00	16.00	16.00	16.00	17.25

(4) 32"x48" Gypsum Board. If grey surfaced and round edged, is subject to the minimum liner board price, to any destination. Square edge or cutstock board in size 32"x48" is subject to the minimum wallboard price, except where used for specific roof jobs only, size 32"x48" cutstock board is subject to the minimum liner board price for such specific jobs.

(5) 36"x48" Gypsum Board. 36"x48" is standard liner board size in all states for use on specific gypsum roof jobs only and is subject to minimum liner board price for such specific gypsum roof jobs.

†(6) Delivered carload minimum prices in markets as listed are same as in adjacent cities, as indicated below:

Delivered Carload Minimum Prices In—	*Same as—*
College Park, Ga.	Atlanta, Ga.
Elkridge, Glen Burnie, Catonsville, Riderwood and Towson, Maryland	Baltimore, Md.
Bristol, Tenn.	Bristol, Va.
Cheviot, Bridgetown and North College Hill, Ohio	Cincinnati, O.
Euclid, North Randall & Bedford, Ohio	Cleveland, O.
Dodson & Edgecomb, Mo.; Rosedale, Waldo, Argentine, Westport, Overland Park and Kansas City, Kansas	Kansas City, Mo.
Saint Louis County and town of Imperial (in Jefferson County, Missouri	St. Louis, Mo.
Armory, Indian Orchard, Oak Street & Chicopee, Mass.	Springfield, Mass.
South Windham, Maine	Portland, Maine
Gabe, Shepard and Wilmont, Okla.	Okla. City, Okla.
Rosslyn, and Lacey, Virginia	Washington, D. C.
Omaha, Nebraska	Council Bluffs, Ia.
Moline, East Moline and Rock Island, Illinois	Davenport, Iowa
Virginia Beach, Virginia	Norfolk, Va.
†Boardman, Ohio	Youngstown, Ohio

9904 #Where an old 'rate per ton' is effect (example: $3.45 per ton) the freight per M sq. ft. shall be figured on basis of rate per cwt. nearest to rate per ton, fractions of less than 1/4¢ per cwt. to be dropped, fractions of 1/4¢ per cwt. to 1/2¢ per cwt. to be considered as 1/2¢. Example: The rate of $3.45 per ton equals 17¼¢ per cwt. For purpose of arriving at delivered price, however, the rate of 17½¢ shall be used.

*Prices f.o.b. cars Philadelphia, Pa. apply for shipments into the following area only: States of New York, New Jersey, Maryland, Delaware and Virginia; the District of Columbia; that portion of Pennsylvania east of and including Potter, Cameron, Clinton, Center, Mifflin, Juniata, Perry, Franklin and Fulton Counties; also Morgan, Berkeley and Jefferson Counties, West Virginia.

Stopover, Switching and Other Extra Delivery Charges:

All stopover charges, switching charges and other extra delivery charges will be paid by customers; that is to say, in arriving at the minimum price all such charges must be added. Exception: Stopover charges need not be included on shipments to destinations within any Gypsum Board Del'd Price Area wherein minimum prices of patented gypsum board products delivered by truck are same as minimum prices for deliveries in carloads by rail.

The above prices apply to the sale of all board embodying the claims of our patents in all markets except where an exception is made as hereinafter expressly stated:

(1) Until further notice the above minimum prices shall not apply to sales of patented gypsum board products for shipment to or delivery in the following area: States of California, Arizona, Nevada, Utah, Idaho, Oregon and Washington, also that portion of State of Montana west of and including Phillips, Petroleum, Musselshell, Yellowstone and Carbon Counties.

(2) Plaster Lath Exceptions:

(a) The minimum price of 3/8" patented gypsum plaster lath, in straight and pool carloads, or in mixed carloads with other gypsum products is $16.50 per M sq. ft. f.o.b. cars delivered to dealers warehouse or siding in Palm Beach, Dade, Broward and Monroe Counties, Florida. This change becomes effective January 10, 1938.

(3) Delivered Price Areas:

Prices of patented gypsum board products, in straight and pool cars or in mixed cars with other gypsum products, f.o.b. cars delivered to dealers warehouse or siding within areas listed below are as follows:

9905 Delivered Prices Into:	1/4" Gypsum Wallboard	3/8" Gypsum Wallboard	1/2" Gypsum Wallboard	1/2" Gypsum Sheathing	3/8" Tiled Gypsum Wallboard	3/8" Gypsum Plaster Lath	1/2" Gypsum Plaster Lath	1/4" Gypsum Liner Board	3/8" Gypsum Liner Board	1/2" Gypsum Liner Board
(i) McHenry, Kane and Lake Counties, Illinois (except towns of Deerfield, Highland Park, Blodgett, Briergate and Lake Forest):										
	20.55	23.75	26.00	23.00	50.75	13.75	16.00	15.55	15.75	17.25
(j) Wayne County, Michigan; towns of Birmingham, Clawson, Farmington, Ferndale, Hazel Park and Royal Oak in Oakland County, Michigan; and towns of Warren, Halfway, Fraser, Roseville, Saint Clair Shores, East Detroit, Van Dyke and Centerline in Macomb County, Michigan.										
	20.80	24.10	26.50	23.50	51.10	14.10	16.50	15.80	16.10	17.75
(k) Grand Rapids, Mich., Switching Area (as described in published railroad tariffs):										
	21.00	24.00	26.00	23.00	51.00	14.00	16.00	16.00	16.00	17.25

(4) 32″ x 48″ Gypsum Board. If grey surfaced and round edged, is subject to the minimum liner board price, to any destination. Square edge or cutstock board in size 32″x48″ is subject to the minimum wallboard price, except where used for specific roof jobs only, size 32″x48″ cutstock board is subject to the minimum liner board price for such specific jobs.

(5) 36″x48″ Gypsum Board. 36″x48″ is standard liner board size in all states for use on specific gypsum roof jobs only and is subject to minimum liner board price for such specific gypsum roof jobs.

(6) Delivered carload minimum prices in markets as listed are same as in adjacent cities, as indicated below:

Delivered Carload Minimum Prices In—	*Same as—*
College Park, Ga.	Atlanta, Ga.
Elkridge, Glen Burnie, Catonsville, Riderwood and Towson, Maryland	Baltimore, Md.
Bristol, Tenn.	Bristol, Va.
Cheviot, Bridgetown and North College Hill, Ohio	Cincinnati, O.
Euclid, North Randall & Bedford, Ohio	Cleveland, O.
Dodson & Edgecomb, Mo.; Rosedale, Waldo, Argentine, Westport, Overland Park and Kansas City, Kansas	Kansas City, Mo.
Saint Louis County and town of Imperial (in Jefferson County), Missouri	St. Louis, Mo.
Armory, Indian Orchard, Oak Street & Chicopee, Mass.	Springfield, Mass.
South Windham, Maine	Portland, Maine
Gabe, Shepard and Wilmont, Okla.	Okla. City, Okla.
†Rosslyn, and Lacey, Virginia, and Montgomery County, Md.	Washington, D. C.
Omaha, Nebraska	Council Bluffs, Ia.
Moline, East Moline and Rock Island, Illinois	Davenport, Iowa
Virginia Beach, Virginia	Norfolk, Va.
Boardman, Ohio	Youngstown, Ohio

† Indicates change in this reissue, to become effective January 15, 1938.

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9906 UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

FEBRUARY 11, 1938

Carload Shipments
Board License Bulletin No. 1 (Page 1)—Cancels Page 1
Dated December 17, 1937.

DEAR SIR: Referring to our license contract with you, you are hereby notified that effective February 15, 1938 the minimum prices at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent); including Haggerty patent number 1,500,452, are as follows:

Patented gypsum board products shall be quoted and sold on a delivered basis, f.o.b. cars destination. Delivered price is lowest combination of mill price plus freight from that mill to destination (See Note # page 2). In stopover cars delivered price for any part of car is carload delivered price as above defined to point of delivery of that part of car. Rates as shown in published freight tariffs, with exceptions as provided for in this bulletin. To determine board footage required to meet straight or mixed carload minimum weights, as shown in published freight tariffs, use weights per M sq. ft. as shown below:

Dealer Prices f.o.b. cars: (Applying for standard sizes as listed in Bulletin No. 4)	1/4" Gypsum Wallboard (Wt. 1050 # per M)	3/8" Gypsum Wallboard (Wt. 1475 # per M)	1/2" Gypsum Wallboard (Wt. 2000 # per M)	1/2" Gypsum Sheathing (Wt. 2000 # per M)	3/4" Gypsum Wallboard (Wt. 3300 # per M)	3/8" Tiled Gypsum Wallbd. (Wt. 1475 # per M)	3/8" Gypsum Plaster Lath (Wt. 1475 # per M)	1/2" Gypsum Plaster Lath (Wt. 2000 # per M)	1/4" Gypsum Liner Board (Wt. 1050 # per M)	3/8" Gypsum Liner Board (Wt. 1475 # per M)	1/2" Gypsum Liner Board (Wt. 2000 # per M)
Acme, Texas	20.00	23.00	25.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
Boston, Mass.	20.00	23.00	25.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
Detroit, Mich.	20.00	23.00	25.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
East Chicago, Ind.	20.00	23.00	25.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
Fort Dodge, Iowa	20.00	23.00	25.00	22.00	36.50	50.00	13.00	15.00	15.00	15.00	16.25
Grand Rapids, Mich.	20.00	23.00	25.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
Gypsum, Ohio	20.00	23.00	25.00	22.00	36.50	50.00	13.00	15.00	15.00	15.00	16.25
†Heath, Montana	20.00†	23.00	25.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
Laramie, Wyo.	24.35	29.05	— —	— —	— —	56.05	19.05	— —	— —	21.05	— —
Loveland, Colo.	24.35	29.05	— —	— —	— —	56.05	19.05	— —	— —	21.05	— —
National City, Mich.	20.00	23.00	25.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
New Brighton, S. I., N. Y.	20.00	23.00	25.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
Oakfield, N. Y.	20.00	23.00	25.00	22.00	36.50	50.00	13.00	15.00	15.00	15.00	16.25
*Philadelphia, Pa.	*20.00	*23.00	*25.00	*22.00	— —	*50.00	*13.00	*15.00	*15.00	*15.00	*16.25
Plastereo, Va.	20.00	23.00	25.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
Southard, Okla.	20.00	23.00	25.00	22.00	36.50	50.00	13.00	15.00	15.00	15.00	16.25
Sweetwater, Texas	20.00	23.00	25.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25

† Indicates change in this reissue (effective February 15, 1938).

9907 #Where an odd 'rate per ton' is in effect (example: $3.45 per ton) the freight per M sq. ft. shall be figured on basis of rate per cwt. nearest to rate per ton, fractions of less than 1/4¢ per cwt. to be dropped, fractions of 1/4¢ per cwt. to 1/2¢ per cwt. to be considered as 1/2¢. Example: The rate of $3.45 per ton equals 17¼¢ per cwt. For purpose of arriving at delivered price, however, the rate of 17½¢ shall be used.

*Prices f.o.b. cars Philadelphia, Pa. apply for shipments into the following area only: States of New York, New Jersey, Maryland, Delaware and Virginia; The District of Columbia; that portion of Pennsylvania east of and including Potter, Cameron, Clinton, Center, Mifflin, Juniata, Perry, Franklin and Fulton Counties; also Morgan, Berkeley and Jefferson Counties, West Virginia.

Stopover, Switching and Other Extra Delivery Charges:

All stopover charges, switching charges and other extra delivery charges will be paid by customers; that is to say, in arriving at the minimum price all such charges must be added. Exception: Stopover charges need not be included on shipments to destinations within any Gypsum Board Del'd Price Area wherein minimum prices of patented gypsum board products delivered by truck are same as minimum prices for deliveries in carloads by rail.

The above prices apply to the sale of all board embodying the claims of our patents in all markets except where an exception is made as hereinafter expressly stated:

(1) Until further notice the above minimum prices shall not apply to sales of patented gypsum board products for shipment to or delivery in the following area: States of California, Arizona, Nevada, Utah, Idaho, Oregon and Washington, also that portion of State of Montana west of and including Phillips, Petroleum, Musselshell, Yellowstone and Carbon Counties.

†(1A) Wallboard Exceptions.

The minimum price of 1/4" patented gypsum wallboard delivered to Key West, Florida is $24.00 per M sq. ft.

The minimum price of 3/8" patented gypsum wallboard delivered to Key West, Florida is $29.00 per M sq. ft.

Minimum prices as above stated for delivery to Key West, Florida apply on a minimum quantity of 40000# of 1/4" and/or 3/8" patented gypsum wallboard only.

(2) Plaster Lath Exceptions:

The minimum price of 3/8" patented gypsum plaster lath, in straight and pool carloads, or in mixed carloads with other gypsum products is $16.50 per M sq. ft. f.o.b. cars delivered to dealers warehouse or siding in Palm Beach, Dade, Broward and Monroe Counties, Florida.

(3) Delivered Price Areas:

Prices of patented gypsum board products, in straight and pool cars or in mixed cars with other gypsum products, f.o.b. cars delivered to dealers warehouse or siding within areas listed below are as follows:

† Indicates changes, effective immediately.

9908 UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

APRIL 1, 1938

Carload Shipments
Board License Bulletin No. 1 (Page 1)—Cancels Page 1
Dated February 11, 1938

MR. C. NEWMAN
Chicago Office

DEAR SIR: Referring to our license contract with you, you are hereby notified that effective April 5, 1938 the minimum prices at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent), including Haggerty patent number 1,500,452, are as follows:

Patented gypsum board products shall be quoted and sold on a delivered basis, f.o.b. cars destination. Delivered price is lowest combination of mill price plus freight from that mill to destination (See Note # page 2). In stopover cars delivered price for any part of car is carload delivered price as above defined to point of delivery of that part of car. Rates as shown in published freight tariffs, with exceptions as provided for in this bulletin. To determine board footage required to meet straight or mixed carload minimum weights, as shown in published freight tariffs, use weights per M sq. ft. as shown below:

Dealer Prices f.o.b. cars: (Applying for standard sizes as listed in Bulletin No. 4)	1/4" Gypsum Wallboard (Wt. 1050 # per M)	3/8" Gypsum Wallboard (Wt. 1475 # per M)	1/2" Gypsum Wallboard (Wt. 2000 # per M)	1/2" Gypsum Sheathing (Wt. 2000 # per M)	3/4" Gypsum Wallboard (Wt. 3300 # per M)	3/8" Tiled Gypsum Wallbd. (Wt. 1475 # per M)	3/8" Gypsum Plaster Lath (Wt. 1475 # per M)	1/2" Gypsum Plaster Lath (Wt. 2000 # per M)	1/4" Gypsum Liner Board (Wt. 1050 # per M)	3/8" Gypsum Liner Board (Wt. 1475 # per M)	1/2" Gypsum Liner Board (Wt. 2000 # per M)
Acme, Texas	20.00	23.00	25.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
Boston, Mass.	20.00	23.00	25.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
Detroit, Mich.	20.00	23.00	25.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
East Chicago, Ind.	20.00	23.00	25.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
Fort Dodge, Iowa	20.00	23.00	25.00	22.00	36.50	50.00	13.00	15.00	15.00	15.00	16.25
Grand Rapids, Mich.	20.00	23.00	25.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
Gypsum, Ohio	20.00	23.00	25.00	22.00	36.50	50.00	13.00	15.00	15.00	15.00	16.25
Heath, Montana	20.00	23.00	25.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
†Laramie, Wyo.	24.55†	29.35†	— —	— —	— —	56.35†	19.35†	— —	— —	21.35†	— —
†Loveland, Colo.	24.55†	29.35†	— —	30.60†	— —	56.35†	19.35†	— —	— —	21.35†	— —
National City, Mich.	20.00	23.00	25.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
New Brighton, S. I., N. Y.	20.00	23.00	25.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
Oakfield, N. Y.	20.00	23.00	25.00	22.00	36.50	50.00	13.00	15.00	15.00	15.00	16.25
*Philadelphia, Pa.	*20.00	*23.00	*25.00	*22.00	— —	*50.00	*13.00	*15.00	*15.00	*15.00	*16.25
Plasterco, Va.	20.00	23.00	25.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
Southard, Okla.	20.00	23.00	25.00	22.00	36.50	50.00	13.00	15.00	15.00	15.00	16.25
Sweetwater, Texas	20.00	23.00	25.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25

† Indicates change in this reissue.



9909 (3) Delivered Price Areas: (Cont'd)

Delivered Prices Into:	1/4" Gypsum Wallboard	3/8" Gypsum Wallboard	1/2" Gypsum Wallboard	1/2" Gypsum Sheathing	3/8" Tiled Gypsum Wallboard	3/8" Gypsum Plaster Lath	1/2" Gypsum Plaster Lath	1/4" Gypsum Liner Board	3/8" Gypsum Liner Board	1/2" Gypsum Liner Board
(a) Essex, Middlesex, Suffolk and Norfolk Counties, Mass., that portion of Plymouth County, Mass. north of continuation of Southern boundary of Norfolk County, and town of Mansfield, Mass.; also Manhattan, Bronx, Kings, Queens, Richmond and Nassau Counties, New York; also Hudson, Essex, Bergen, Passaic, Union, Morris, Somerset, Middlesex, Monmouth, Mercer and Camden Counties, New Jersey; also that portion of Burlington County, N. J. west of line extending from the southwest corner of Monmouth County to the northeast corner of Camden County; also Bucks, Montgomery, Chester, Delaware and Philadelphia Counties, Penna.:	20.80	24.10	26.50	23.50	51.10	14.10	16.50	15.80	16.10	17.75
†(b) Balance of Plymouth County, Mass., Bristol County, Mass. (except town of Mansfield), Worcester and Barnstable Counties, Mass.; also Rockingham and Strafford Counties, New Hampshire; also State of Rhode Island; also Fairfield County, Connecticut; also Orange and Putnam Counties, New York; also Sussex, Warren, Hunterdon, Ocean, Atlantic, Cape May, Cumberland, Salem and Gloucester Counties, New Jersey; also that portion of Burlington County, N. J. east of line extending from the southwest corner of Monmouth County to the northeast corner of Camden County; also New Castle County, Delaware; also Lehigh, Northampton, Berks and Lancaster Counties, Penna.:	21.05	24.50	27.00	24.00	51.50	14.50	17.00	16.05	16.50	18.25
(c) Westchester, Rockland and Suffolk Counties, New York:	20.90	24.30	26.75	23.75	51.30	14.30	16.75	15.90	16.30	18.00
(d) State of Connecticut (except Fairfield and Litchfield Counties):	21.20	24.65	27.25	24.25	51.65	14.65	17.25	16.20	16.65	18.50
(e) Sullivan, Ulster and Dutchess Counties, New York and Litchfield County, Connecticut:	21.30	24.85	27.50	24.50	51.85	14.85	17.50	16.30	16.85	18.75

† Indicates change, to become effective June 1, 1938

9910 Delivered Prices. Into:	1/4" Gypsum Wallboard	3/8" Gypsum Wallboard	1/2" Gypsum Wallboard	1/2" Gypsum Sheathing	3/8" Tiled Gypsum Wallboard	3/8" Gypsum Plaster Lath	1/2" Gypsum Plaster Lath	1/4" Gypsum Liner Board	3/8" Gypsum Liner Board	1/2" Gypsum Liner Board
(f) Delaware, Greene and Columbia Counties, New York:	21.60	25.20	28.00	25.00	52.20	15.20	18.00	16.60	17.20	19.25
(g) Niagara and Erie Counties, New York (including town of Gowanda):	20.75	24.05	26.40	23.40	51.05	14.05	16.40	15.75	16.05	17.65
(h) Cook and Du Page Counties, Illinois; Lake County, Indiana; and towns of Deerfield, Highland Park, Blodgett, Briergate and Lake Forest, in Lake County, Illinois:	20.40	23.55	25.75	22.75	50.55	13.55	15.75	15.40	15.55	17.00
(i) McHenry, Kane and Lake Counties, Illinois (except towns of Deerfield, Highland Park, Blodgett, Briergate and Lake Forest):	20.55	23.75	26.00	23.00	50.75	13.75	16.00	15.55	15.75	17.25
(j) Wayne County, Michigan; towns of Birmingham, Clawson, Farmington, Ferndale, Hazel Park and Royal Oak in Oakland County, Michigan; and towns of Warren, Halfway, Fraser, Roseville, Saint Clair Shores, East Detroit, Van Dyke and Centerline in Macomb County, Michigan.	20.80	24.10	26.50	23.50	51.10	14.10	16.50	15.80	16.10	17.75
(k) Grand Rapids, Mich., Switching Area (as described in published railroad tariffs):	21.00	24.00	26.00	23.00	51.00	14.00	16.00	16.00	16.00	17.25

(4) 32″x48″ Gypsum Board. If grey surfaced and round edged, is subject to the minimum liner board price, to any destination. Square edge or cutstock board in size 32″x48″ is subject to the minimum wallboard price, except where used for specific roof jobs only, size 32″x48″ cutstock board is subject to the minimum liner board price for such specific jobs.

(5) 36″x48″ Gypsum Board. 36″x48″ is standard liner board size in all states for use on specific gypsum roof jobs only and is subject to minimum liner board price for such specific gypsum roof jobs.

†(6) Delivered carload minimum prices in markets as listed are same as in adjacent cities, as indicated below:

Delivered Carload Minimum Prices in—	*Same as—*
College Park, Ga.	Atlanta, Ga.
Elkridge, Glen Burnie, Catonsville, Riderwood and Towson, Maryland	Baltimore, Md.
Bristol, Tenn.	Bristol, Va.
†Cheviot, Bridgetown, Mount Healthy, and North College Hill, Ohio	Cincinnati, O.
Euclid, North Randall and Bedford, O.	Cleveland, O.
Dodson & Edgecomb, Mo.; Rosedale, Waldo, Argentine, Westport, Overland Park and Kansas City, Kansas	Kansas City, Mo.
Saint Louis County and town of Imperial (in Jefferson County), Missouri	St. Louis, Mo.
Armory, Indian Orchard, Oak Street & Chicopee, Mass.	Springfield, Mass.
South Windham, Maine	Portland, Maine
Gabe, Shepard and Wilmont, Okla.	Okla. City, Okla.
Rosslyn, and Lacey, Virginia, and Montgomery County, Md.	Washington, D. C.
Omaha, Nebraska	Council Bluffs, Ia.
Moline, East Moline and Rock Island, Illinois	Davenport, Iowa
Virginia Beach, Virginia	Norfolk, Va.
Boardman, Ohio	Youngstown, Ohio

† Indicates change in this reissue to become effective June 1, 1938.

9911 (3) Delivered Price Areas: (Cont'd)

Delivered Prices Into:	1/4" Gypsum Wallboard	3/8" Gypsum Wallboard	1/2" Gypsum Wallboard	1/2" Gypsum Sheathing	3/8" Tiled Gypsum Wallboard	3/8" Gypsum Plaster Lath	1/2" Gypsum Plaster Lath	1/4" Gypsum Liner Board	3/8" Gypsum Liner Board	1/2" Gypsum Liner Board
(i) McHenry, Kane and Lake Counties, Illinois (except towns of Deerfield, Highland Park, Blodgett, Briergate and Lake Forest):	20.55	23.75	26.00	23.00	50.75	13.75	16.00	15.55	15.75	17.25
(j) Wayne County, Michigan; towns of Birmingham, Clawson, Farmington, Ferndale, Hazel Park and Royal Oak in Oakland County, Michigan; and towns of Warren, Halfway, Fraser, Roseville, Saint Clair Shores, East Detroit, Van Dyke and Centerline in Macomb County, Michigan.	20.80	24.10	26.50	23.50	51.10	14.10	16.50	15.80	16.10	17.75
(k) Grand Rapids, Mich., Switching Area (as described in published railroad tariffs):	21.00	24.00	26.00	23.00	51.00	14.00	16.00	16.00	16.00	17.25

(4) 32"x48". Gypsum Board. If grey surfaced and round edged, is subject to the minimum liner board price, to any destination. Square edge or cutstock board in size 32"x48" is subject to the minimum wall board price, except where used for specific roof jobs only, size 32"x48" cutstock board is subject to the minimum liner board price for such specific jobs.

(5) 36"x48" Gypsum Board. 36"x48" is standard liner board size in all states for use on specific gypsum roof jobs only and is subject to minimum liner board price for such specific gypsum roof jobs.

†(6) Delivered carload minimum prices in markets as listed are same as in adjacent cities, as indicated below:

† Indicates change in this reissue.

Delivered Carload Minimum Prices In—	*Same as—*
College Park, Ga.	Atlanta, Ga.
Elkridge, Glen Burnie, Catonsville, Riderwood and Towson, Maryland	Baltimore, Md.
Bristol, Tenn.	Bristol, Va.
Cheviot, Bridgetown, Mount Healthy and North College Hill, Ohio	Cincinnati, O.
Euclid, North Randall and Bedford, O.	Cleveland, O.
Dodson, Edgecomb, Waldo, & Westport, Mo.; Argentine, Rosedale, Overland Park, Merriam & Kansas City, Kans.	Kansas City, Mo.
Saint Louis County and town of Imperial (in Jefferson County), Missouri	St. Louis, Mo.
Armory, Indian Orchard, Oak Street & Chicopee, Mass.	Springfield, Mass.
South Windham, Maine	Portland, Maine
Gabe, Shepard and Wilmont, Okla.	Okla. City, Okla.
Rosslyn, and Lacey, Virginia & Montgomery County, Md.	Washington, D. C.
Omaha, Nebraska	Council Bluffs, Ia.
Moline, East Moline, and Rock Island, Illinois	Davenport, Iowa
Virginia Beach, Virginia	Norfolk, Va.
Boardman, Ohio	Youngstown, Ohio

† Indicates change in this reissue.

9912 UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

FEBRUARY 6, 1939

Carload Shipments
Board License Bulletin No. 1 (Page 1)—Cancels Page 1
Dated April 1, 1938

C. NEWMAN

DEAR SIR: Referring to our license contract with you, you are hereby notified that effective February 7, 1939, the minimum prices at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent) are as follows:

Minimum prices per thousand square feet of patented gypsum board products for delivery by rail, in straight cars or cars mixed with other gypsum products, including pool cars and stop over cars, shall be the lowest combination of mill price listed below and all rail freight from such mill to destination. Rail freight shall be determined in accordance with rail rates as published in regular freight tariffs, using weights shown below, plus all stopover, switching, cartage and other extra delivery charges in connection with the shipment. In stopover cars, minimum prices of the patented gypsum board products in any portion of the car shall be the minimum prices as herein defined to the point of delivery of that portion of the car.

MILLS	1/4" Gypsum Wallboard (Wt. 1050 # per M)	3/8" Gypsum Wallboard (Wt. 1475 # per M)	1/2" Gypsum Wallboard (Wt. 2000 # per M)	1/2" Gypsum Sheathing (Wt. 2000 # per M)	3/8" Tiled Gypsum Wallbd. (Wt. 1475 # per M)	3/8" Gypsum Plaster Lath (Wt. 1475 # per M)	1/2" Gypsum Plaster Lath (Wt. 2000 # per M)	1/4" Gypsum Liner Bd. (Wt. 1050 # per M)	3/8" Gypsum Liner Bd. (Wt. 1475 # per M)	1/2" Gypsum Liner Bd. (Wt. 2000 # per M)
Acme, Texas Boston, Mass. Detroit, Mich. E. Chicago, Ind. Ft. Dodge, Iowa Grand Rapids, Mich. Gypsum, Ohio Heath, Montana Jacksonville, Fla. National City, Mich. New Brighton, S. I., N. Y. Oakfield, N. Y Philadelphia, Pa. Plastereo, Va. Southard, Okla. Sweetwater, Tex.	20.00	23.00	25.00	22.00	50.00	13.00	15.00	15.00	15.00	16.25

9913 Where an old 'rate per ton' is in effect (example: $3.45 per ton) the freight per M sq. ft. shall be figured on the basis of rate per cwt., fractions of less than 1/4¢ per cwt. to be dropped, fractions of 1/4¢ per cwt. to 1/2¢ per cwt. to be considered as 1/2¢. Example: The rate of $3.45 per ton equals 17¼¢ per cwt. For purpose of arriving at delivered price, however, the rate of 17½¢ shall be used.

The above prices apply to the sale of all patented gypsum board embodying the claims of our patents in all markets except where an exception is made as hereinafter expressly stated:

(1) Pacific Coast—Until further notice, minimum prices as above defined shall not apply to sales of the patented gypsum board products for shipment to or delivery in the following area: States of California, Arizona, Nevada, Utah, Idaho, Oregon and Washington; also that portion of the State of Montana west of and including Phillips, Petroleum, Musselshell, Yellowstone and Carbon Counties.

(2) 32"x48" Gypsum Board—Specific Roof Jobs—The minimum price of cutstock board in size 32"x48", when sold for use on specific roof jobs, is the same as the minimum liner board price.

(3) Key West, Florida—The minimum price of 1/4" patented gypsum wallboard delivered to Key West, Florida is $24.00 per M sq. ft.

The minimum price of 3/8" patented gypsum wallboard delivered to Key West, Florida is $29.00 per M sq. ft.

The minimum price of 3/8" patented gypsum plaster lath delivered to Key West, Florida is $17.20 per M sq. ft.

(4) Minimum Prices Into Delivered Price Areas.

Minimum prices of the patented gypsum board products in straight cars or cars mixed with other gypsum products, including pool cars and stopover cars, for delivery by rail within areas listed below, are the prices set forth below plus any stopover charges (except that stopover charges need not be added to determine the minimum price on shipments to destinations in delivered price areas wherein the minimum price delivered by truck is the same as the minimum price for delivery by rail):

	1/4" Gypsum Wallboard	3/8" Gypsum Wallboard	1/2" Gypsum Wallboard	1/2" Gypsum Sheathing	3/8" Tiled Gypsum Wallboard	3/8" Gypsum Plaster Lath	1/2" Gypsum Plaster Lath	1/4" Gypsum Liner Board	3/8" Gypsum Liner Board	1/2" Gypsum Liner Board
(a) Into Essex, Middlesex, Suffolk and Norfolk Counties, Mass., that portion of Plymouth County, Mass., north of continuation of Southern boundary of Norfolk County, and town of Mansfield, Mass., also Manhattan, Bronx, Kings, Queens, Richmond and Nassau Counties, New York; also Hudson, Essex, Bergen, Passaic, Union, Morris, Somerset, Middlesex, Monmouth, Mercer and Camden Counties, New Jersey; also that portion of Burlington County, N. J., west of line extending from the southwest corner of Monmouth County to the northeast corner of Camden County; also Bucks, Montgomery, Chester, Delaware and Philadelphia Counties, Penna.:	20.80	24.10	26.50	23.50	51.10	14.10	16.50	15.80	16.10	17.75

9914	1/4" Gypsum Wallboard	3/8" Gypsum Wallboard	1/2" Gypsum Wallboard	1/2" Gypsum Sheathing	3/8" Tiled Gypsum Wallboard	3/8" Gypsum Plaster Lath	1/2" Gypsum Plaster Lath	1/4" Gypsum Liner Board	3/8" Gypsum Liner Board	1/2" Gypsum Liner Board
(b) Into balance of Plymouth County, Mass., Bristol County, Mass. (except town of Mansfield), Worcester and Barnstable Counties, Mass.; also Rockingham and Strafford Counties, New Hampshire; also State of Rhode Island; also Fairfield County, Connecticut; also Orange and Putnam Counties, New York; also Sussex, Warren, Hunterdon, Ocean, Atlantic, Cape May, Cumberland, Salem and Gloucester Counties, New Jersey; also that portion of Burlington County, N. J., east of line extending from the southwest corner of Monmouth County to the northeast corner of Camden County; also New Castle County, Delaware; also Lehigh, Northampton, Berks and Lancaster Counties, Penna.:	21.05	24.50	27.00	24.00	51.50	14.50	17.00	16.05	16.50	18.25
(c) Into Westchester, Rockland and Suffolk Counties, New York:	20.90	24.30	26.75	23.75	51.30	14.30	16.75	15.90	16.30	18.00
(d) Into State of Connecticut (except Fairfield and Litchfield Counties):	21.20	24.65	27.25	24.25	51.65	14.65	17.25	16.20	16.65	18.50
(e) Into Sullivan, Ulster and Dutchess Counties, New York, and Litchfield County, Connecticut:	21.30	24.85	27.50	24.50	51.85	14.85	17.50	16.30	16.85	18.75
(f) Into Delaware, Greene and Columbia Counties, New York:	21.60	25.20	28.00	25.00	52.20	15.20	18.00	16.60	17.20	19.25
(g) Into Niagara and Erie Counties, New York (including town of Gowanda):	20.75	24.05	26.40	23.40	51.05	14.05	16.40	15.75	16.05	17.65
(h) Into Cook and DuPage Counties, Illinois; Lake County, Indiana; and towns of Deerfield, Highland Park, Blodgett, Briargate and Lake Forest, in Lake County, Illinois:	20.40	23.55	25.75	22.75	50.55	13.55	15.75	15.40	15.55	17.00
(i) Into McHenry, Kane and Lake Counties, Illinois (except towns of Deerfield, Highland Park, Blodgett, Briargate and Lake Forest):	20.55	23.75	26.00	23.00	50.75	13.75	16.00	15.55	15.75	17.25
(j) Into Wayne County, Michigan; towns of Birmingham, Clawson, Farmington, Ferndale, Hazel Park and Royal Oak in Oakland County, Michigan; and towns of Warren, Halfway, Fraser, Roseville, Saint Clair Shores, East Detroit, Van Dyke and Centerline in Macomb County, Michigan:	20.80	24.10	26.50	23.50	51.10	14.10	16.50	15.80	16.10	17.75

9915	1/4" Gypsum Wallboard	3/8" Gypsum Wallboard	1/2" Gypsum Wallboard	1/2" Gypsum Sheathing	3/8" Tiled Gypsum Wallboard	3/8" Gypsum Plaster Lath	1/2" Gypsum Plaster Lath	1/4" Gypsum Liner Board	3/8" Gypsum Liner Board	1/2" Gypsum Liner Board
(k) Into Grand Rapids, Mich., Switching Area (as described in published railroad tariffs):	21.00	24.00	26.00	23.00	51.00	14.00	16.00	16.00	16.00	17.25
(i) Into Jacksonville and So. Jacksonville, Fla. Switching Area, where per car switching rates apply (as described in published railroad tariffs):	21.25	24.25	26.25	23.25	51.25	14.25	16.25	16.25	16.25	17.50

(5) Minimum prices delivered in markets as listed are same as in adjacent cities, as indicated below:

Delivered minimum Prices In—	*Same As—*
College Park, Ga.	Atlanta, Ga.
Elkridge, Glen Burnie, Catonsville, Riderwood and Towson, Maryland	Baltimore, Md.
Bristol, Tenn.	Bristol, Va.
Cheviot, Bridgetown, Mount Healthy and North College Hill, Ohio	Cincinnati, O.
Euclid, North Randall and Bedford, Ohio	Cleveland, O.
Dodson, Edgecomb, Waldo and Westport, Mo.; Rosedale, Argentine, Overland Park, Merriam and Kansas City, Kansas	Kansas City, Mo.
Saint Louis County and town of Imperial (in Jefferson County), Missouri	St. Louis, Mo.
Armory, Indian Orchard, Oak Street and Chicopee, Mass.	Springfield, Mass.
South Windham, Maine	Portland, Maine
Gabe, Shepard and Wilmont, Okla.	Okla. City, Okla.
Rosslyn and Lacy, Virginia, and Montgomery County, Md.	Washington, D. C.
Omaha, Nebraska	Council Bluffs, Ia.
Moline, East Moline and Rock Island, Illinois	Davenport, Iowa
Virginia Beach, Virginia	Norfolk, Va.
Boardman, Ohio	Youngstown, Ohio

(6) Minimum Prices to Contractors—Consumers.

On sales of standard sizes to contractors, roofing contractors, metal ceiling contractors, prefabricated house manufacturers and consumers generally, the minimum price shall be the minimum price as above estab-
9916 lished plus the following amounts per M sq. ft.:

To Contractors (Inc. Metal Ceiling Contrs.) & to Prefabricated House Mfrs. and Consumers Generally Std. Sizes		To Contractors for Use on Roof Decks Std. Sizes	
Wall Bd. & Sheathing	Lath & Liner	Wall Bd. & Sheathing	Lath & Liner
2.50	1.25	1.25	1.25

(7) Minimum Prices for Non-Standard or Odd Sizes.

On sales of non-standard or odd sizes, the minimum price shall be the minimum price as above established plus the following amounts per M sq. ft.:

To Dealers Odd Sizes		To Contractors (Inc. Metal Ceiling Contrs.) & to Prefabricated House Mfrs. and Consumers Generally Odd Sizes		To Contractors for Use on Roof Decks Odd Sizes	
Wall Bd. & Sheathing	Lath & Liner	Wall Bd. & Sheathing	Lath & Liner	Wall Bd. & Sheathing	Lath & Liner
2.50	1.25	5.00	2.50	1.25	1.25

Yours very truly,

UNITED STATES GYPSUM COMPANY

Vice President.

9917 UNITED STATES GYPSUM COMPANY

MARCH 29, 1939

DEAR SIR:

We understand that you are manufacturing or are about to manufacture at your Texas mill a 1/2" gypsum liner board weighing approximately 2000 lbs. per M sq. ft., 24"x80" square edge, using gray surfaced paper.

Referring to our license agreement with you, you are hereby notified that effective March 30, 1939, the minimum price at which you may sell such product embodying the inventions and improvements set forth and claimed in our letters patent under which you are licensed (not including applications for letters patent) shall be the lowest combination of the following mill prices and all rail freight to Acme, Texas

Acme, Texas Sweetwater, Texas Southard, Oklahoma	$16.25 per M Sq. Ft.

Rail freight shall be determined in accordance with rail rates as published in regular freight tariffs, using the weight shown above, plus all stopover, switching, cartage and other extra delivery charges in connection with the shipment. In stopover cars, the minimum price of such patented gypsum board product in any portion of the car shall be the minimum price as herein defined to the point of delivery of that portion of the car.

Yours very truly,

UNITED STATES GYPSUM COMPANY

Vice-President.

WLK:EAS

9918 Where an odd 'rate per ton' is in effect (example: $3.45 per ton) the freight per M sq. ft. shall be figured on the basis of rate per cwt., fractions of less than 1/4¢ per cwt. to be dropped, fractions of 1/4¢ per cwt. to 1/2¢ per cwt. to be considered as 1/2¢. Example: The rate of $3.45 per ton equals 17¼¢ per cwt. For purpose of arriving at delivered price, however, the rate of 17½¢ shall be used.

The above prices apply to the sale of all patented gypsum board embodying the claims of our patents in all markets except where an exception is made as hereinafter expressly stated:

(1) Pacific Coast—Until further notice, minimum prices as above defined shall not apply to sales of the patented gypsum board products for shipment to or delivery in the following area: States of California, Arizona, Nevada, Utah, Idaho, Oregon and Washington; also that portion of the State of Montana west of and including Phillips, Petroleum, Musselshell, Yellowstone and Carbon Counties.

(2) 32"x48" Gypsum Board—Specific Roof Jobs—The minimum price of cutstock board in size 32"x48", when sold for use on specific roof jobs, is the same as the minimum liner board price.

(3) Key West, Florida—The minimum price of 1/4" patented gypsum wallboard delivered to Key West, Florida is $24.00 per M sq. ft.

The minimum price of 3/8" patented gypsum wallboard delivered to Key West, Florida is $29.00 per M sq. ft.

The minimum price of 3/8" patented gypsum plaster lath delivered to Key West, Florida is $17.20 per M sq. ft.

(4) Minimum Prices into Delivered Prices Areas.

Minimum prices of the patented gypsum board products in straight cars or cars mixed with other gypsum products, including pool cars and stopover cars, for delivery by rail within areas listed below, are the prices set forth below plus any stopover charges (except that stopover charges need not be added to determine the minimum price on shipments to destinations in delivered price areas wherein the minimum price delivered by truck is the same as the minimum price for delivery by rail):

	1/4" Gypsum Wallboard	3/8" Gypsum Wallboard	1/2" Gypsum Wallboard	1/2" Gypsum Sheathing	3/8" Tiled Gypsum Wallboard	3/8" Gypsum Plaster Lath	1/2" Gypsum Plaster Lath	1/4" Gypsum Liner Board	3/8" Gypsum Liner Board	1/2" Gypsum Liner Board
†(a) Into Essex, Middlesex, Suffolk and Norfolk Counties, Mass., that portion of Plymouth County, Mass., north of continuation of Southern boundary of Norfolk County, and town of Mansfield, Mass., also Manhattan, Bronx, Kings, Queens, Richmond and Nassau Counties, New York; also Hudson, Essex, Bergen, Passaic, Union, Morris, Somerset, Middlesex, Monmouth, Mercer and Camden Counties, New Jersey; also that portion of Burlington County, N. J., west of line extending from the southwest corner of Monmouth County to the northeast corner of Camden County; also that portion of Bucks County, Penna. south and east of line drawn between and including towns of Lexington and Lumberville; also that portion of Montgomery County, Penna. south and east of line drawn between and including towns of Mont Clare and So. Hatfield; also Delaware and Philadelphia Counties, Penna.:	20.80	24.10	26.50	23.50	51.10	14.10	16.50	15.80	16.10	17.75
2919 †(b) Into Chester County, Penna.; also that portion of Bucks County, Penna. north and west of line drawn between but not including towns of Lexington and Lumberville; also that portion of Montgomery County, Penna. north and west of line drawn between but not including towns of Mont Clare and So. Hatfield:	20.85	24.20	26.65	23.65	51.20	14.20	16.65	15.85	16.20	17.90
†(c) Into balance of Plymouth County, Mass., Bristol County, Mass. (except town of Mansfield), Worcester and Barnstable Counties, Mass.; also Rockingham and Strafford Counties, New Hampshire; also State of Rhode Island; also Fairfield County, Connecticut; also Orange and Putnam Counties, New York; also Sussex, Warren, Hunterdon, Ocean, Atlantic, Cape May and Cumberland Counties, New Jersey; also that portion of Burlington County, N. J., east of line extending from the southwest corner of Monmouth County to the northeast corner of Camden County; also that portion of New Castle County, Delaware, south of line extending through, but not including towns of New Castle, Tasker, State Road and Audenried; also Cecil County, Maryland; also Lehigh, Northampton, Berks and Lancaster Counties, Penna.; also town of Milford (in Pike County), Penna.:	21.05	24.50	27.00	24.00	51.50	14.50	17.00	16.05	16.50	18.25
†(d) Into Westchester, Rockland and Suffolk Counties, New York; Gloucester and Salem Counties, New Jersey; also that portion of New Castle County, Delaware, north of line extending through and including towns of New Castle, Tasker, State Road and Audenried:	20.90	24.30	26.75	23.75	51.30	14.30	16.75	15.90	16.30	18.00
(e) Into state of Connecticut (except Fairfield and Litchfield Counties):	21.20	24.65	27.25	24.25	51.65	14.65	17.25	16.20	16.65	18.50
†(f) Into Sullivan, Ulster and Dutchess Counties, New York, and Litchfield County, Connecticut; also towns of Stroudsburg and East Stroudsburg (in Monroe County), Penna.:	21.30	24.85	27.50	24.50	51.85	14.85	17.50	16.30	16.85	18.75

	1/4" Gypsum Wallboard	3/8" Gypsum Wallboard	1/2" Gypsum Wallboard	1/2" Gypsum Sheathing	3/8" Tiled Gypsum Wallboard	3/8" Gypsum Plaster Lath	1/2" Gypsum Plaster Lath	1/4" Gypsum Liner Board	3/8" Gypsum Liner Board	1/2" Gypsum Liner Board
(g) Into Delaware, Green and Columbia Counties, New York:	21.60	25.20	28.00	25.00	52.20	15.20	18.00	16.60	17.20	19.25
(h) Into Niagara and Erie Counties, New York (including town of Gowanda):	20.75	24.05	26.40	23.40	51.05	14.05	16.40	15.75	16.05	17.65
(i) Into Cook and DuPage Counties, Illinois; Lake County, Indiana; and towns of Deerfield, Highland Park, Blodgett, Briargate and Lake Forest, in Lake County, Ill.:	20.40	23.55	25.75	22.75	50.55	13.55	15.75	15.40	15.55	17.00
(j) Into McHenry, Kane and Lake Counties, Illinois (except towns of Deerfield, Highland Park, Blodgett, Briargate and Lake Forest):	20.55	23.75	26.00	23.00	50.75	13.75	16.00	15.55	15.75	17.25
(k) Into Wayne County, Michigan; towns of Birmingham, Clawson, Farmington, Ferndale, Hazel Park and Royal Oak in Oakland County, Michigan; and towns of Warren, Halfway, Fraser, Roseville, Saint Clair Shores, East Detroit, Van Dyke and Centerline in Macomb County, Michigan:	20.80	24.10	26.50	23.50	51.10	14.10	16.50	15.80	16.10	17.75
9920 (l) Into Grand Rapids, Mich., Switching Area (as described in published railroad tariffs):	21.00	24.00	26.00	23.00	51.00	14.00	16.00	16.00	16.00	17.25
(m) Into Jacksonville and So. Jacksonville, Fla. Switching Area, where per car switching rates apply (as described in published railroad tariffs):	21.25	24.25	26.25	23.25	51.25	14.25	16.25	16.25	16.25	17.50

(5) Minimum prices delivered in markets as listed are same as in adjacent cities, as indicated below:

Delivered Minimum Prices In—	*Same as—*
College Park, Ga.	Atlanta, Ga.
Elkridge, Glen Burnie, Catonsville, Riderwood and Towson, Maryland	Baltimore, Md.
Bristol, Tenn.	Bristol, Va.
Cheviot, Bridgetown, Mount Healthy and North College Hill, Ohio	Cincinnati, O.
Euclid, North Randall and Bedford, Ohio	Cleveland, O.
Dodson, Edgecomb, Waldo and Westport, Mo.; Rosedale, Argentine, Overland Park, Merriam and Kansas City, Kansas	Kansas City, Mo.
Saint Louis County and town of Imperial (in Jefferson County), Missouri	St. Louis, Mo.
Armory, Indian Orchard, Oak Street and Chicopee, Mass.	Springfield, Mass.
South Windham, Maine	Portland, Maine
Gabe, Shepard and Wilmont, Okla.	Okla. City, Okla.
Rosslyn and Lacy, Virginia, and Montgomery County, Md.	Washington, D. C.
Omaha, Nebraska	Council Bluffs, Ia.
Moline, East Moline and Rock Island, Illinois	Davenport, Iowa
Virginia Beach, Virginia	Norfolk, Va.
Boardman, Ohio	Youngstown, Ohio

(6) Minimum Prices to Contractors—Consumers.

On sales of standard sizes to contractors, roofing contractors, metal ceiling contractors, prefabricated house manufacturers and consumers generally, the minimum price shall be the minimum price as above established plus the following amounts:

9921 CONFIRMATION OF TELEGRAM

UNITED STATES GYPSUM COMPANY

CHICAGO, MAY 11, 1939.

M. H. Baker, President, National Gypsum Company, 188 Delaware Ave., Buffalo, N. Y.

R. F. Burley, Vice President, Universal Gypsum & Lime Company, 188 Delaware Ave., Buffalo, N. Y.

Grant A. Wileman, Newark Plaster Company, Delawanna, New Jersey.

Frederick Tomkins, President, Newark Plaster Company, c/o The Calvin Tomkins Co., 50 Church St., New York, N. Y.

F. G. Ebsary, President, Ebsary Gypsum Company, Inc., Scottville, New York.

George N. Lenci, Vice President, Ebsary Gypsum Company, Inc., 52 Vanderbilt Ave., New York, N. Y.

C. L. Von Egloffstein, President, Certain-teed Products Corp., 100 East 42nd St., New York, N. Y.

Warren Henley, Merch. Mgr., Certain-teed Products Corp., 1830 Bankers Bldg., 105 W. Adams St., Chicago, Ill.

C. F. Miller, President, American Gypsum Company, Port Clinton, Ohio.

A. R. Black, Gen'l Sales Mgr., American Gypsum Company, Port Clinton, Ohio.

S. M. Gloyd, President, Texas Cement Plaster Co., First National Bldg., Oklahoma City, Okla.

H. E. Chism, Texas Cement Plaster Co., First National Bldg., Oklahoma City, Okla.

Referring to our license contract with you this is to notify you effective May 15, 1939 the minimum prices of patented gypsum board products for shipment into the Savannah Georgia freight area shall be determined in the same manner as provided in the current license bulletin number one using Savannah freight except carload deliveries within switching limits of Savannah and Port Wentworth Georgia where minimum delivered prices shall be your minimum mill price plus $1.25 per M. square feet on patented gypsum wallboard sheathing and linerboard and plus $1.00 per M. sq. ft. on patented gypsum plaster lath.

UNITED STATES GYPSUM COMPANY

9922 UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

JUNE 10, 1939.

MR. C. NEWMAN
Chicago Office

Board License Bulletin (Page 1)—Cancels All Previous Bulletins

DEAR SIR: Referring to our license contract with you, you are hereby notified that effective June 14, 1939, the minimum prices at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent) are as follows:

Minimum prices per M sq. ft. of patented gypsum board products shall be the mill price listed below plus carload rail freight from producing mill to destination of the shipment. Carload rail freight may be equalized with the carload rail freight from any of the producing mills listed below having a lower carload rail freight to such destination.

PRODUCING MILLS	MILL PRICE PER M-SQ. FT.								
	1/4" Gypsum Wallboard (Wt. 1075 # per M)	3/8" Gypsum Wallboard (Wt. 1525 # per M)	1/2" Gypsum Wallboard (Wt. 2050 # per M)	1/2" Gypsum Sheathing (Wt. 2050 # per M)	3/8" Gypsum Plaster Lath (Wt. 1525 # per M)	1/2" Gypsum Plaster Lath (Wt. 2050 # per M)	1/4" Gypsum Liner Bd. (Wt. 1075 # per M)	3/8" Gypsum Liner Bd. (Wt. 1525 # per M)	1/2" Gypsum Liner Bd. (Wt. 2050 # per M)
Acme, Texas Akron, N. Y. Boston, Mass. Clarence Center, New York Delawanna, N. J. Detroit, Mich. East Chicago, Ind. Fort Dodge, Iowa Grand Rapids, Michigan Gypsum, Ohio Hamlin, Texas (Plasterco or Plastereo Jct.) Heath, Montana Jacksonville, Florida National City, Michigan New Brighton, S. I., N. Y. Oakfield, New York Philadelphia, Pa. Plasterco, Va. Portsmouth, N. H. Rotan, Texas Savannah, Ga. Southard, Okla. Sweetwater, Texas Wheatland, N. Y.	20.00	23.00	25.00	22.00	13.00	15.00	15.00	15.00	16.25

9923 In computing the delivered minimum price hereunder, rail freight, wherever mentioned in this bulletin, shall mean rail freight in accordance with rail rates published in regular freight tariffs, using the weights shown above, and shall include all stopover, switching, cartage and other extra delivery charges applicable to the shipment.

If the applicable rail rate, to be used in computing the delivered minimum price, is on a per ton basis, then the rate per CWT. shall first be determined, and fractions of less than 1/4¢ per CWT over or under an even 1¢ or 1/2¢ shall be dropped and the even 1¢ or 1/2¢ shall be used, and fractions of 1/4¢ or more over an even 1¢ or 1/2¢ shall be considered as the next even 1/2¢ or 1¢. Example: The rate of $3.55 per ton equaling 17-3/4¢ per CWT shall be consid-

ered 18¢ per CWT. In converting the applicable per CWT rate into freight per M sq. ft. to determine the minimum price hereunder, fractions of less than 1/2¢ per M sq. ft. shall be dropped and the nearest even 1¢ shall be used, and fractions of 1/2¢ or more per M sq. ft. shall be considered the next even 1¢.

The above prices apply to all sales of patented gypsum board except as follows:

1. Pacific Coast. Until further notice the above minimum prices shall not apply to sales of patented gypsum board for shipment to or delivery in the following area: states of California, Arizona, Nevada, Utah, Idaho, Oregon and Washington; also that portion of the state of Montana west of and including Phillips, Petroleum, Musselshell, Yellowstone and Carbon Counties.

2. Stopover Cars. The minimum price for each portion of a stopover car consigned to a different destination shall be the mill price plus the carload rail freight from the producing mill, provided that carload freight may be equalized with the carload freight from any of the producing mills listed above having a lower carload rail freight to the destination of that portion of the car, except that stopover charges need not be added to determine minimum price on shipments to destinations in which deliveries are made by truck.

3. Delivered Price Areas. Minimum prices of patented gypsum board products per M sq. ft. for delivery within the areas listed below are the prices set forth below plus any stopover charges (except that stopover charges need not be added to determine the minimum price on shipments to destinations in which deliveries are made by truck).

9924

	1/4" Gypsum Wallboard	3/8" Gypsum Wallboard	1/2" Gypsum Wallboard	1/2" Gypsum Sheathing	3/8" Gypsum Plaster Lath	1/2" Gypsum Plaster Lath	1/4" Gypsum Liner Board	3/8" Gypsum Liner Board	1/2" Gypsum Liner Board
(a) Into Essex, Middlesex, Suffolk and Norfolk Counties, Mass., that portion of Plymouth County, Mass., north of continuation of southern boundary of Norfolk County, and town of Mansfield, Mass., also Manhattan, Bronx, Kings, Queens, Richmond and Nassau Counties, New York, also Hudson, Essex, Bergen, Passaic, Union, Morris, Somerset, Middlesex, Monmouth, Mercer and Camden Counties, New Jersey; also that portion of Burlington County, N. J., west of line extending from the southwest corner of Monmouth County to the northeast corner of Camden County; also that portion of Bucks County, Penna., south and east of line drawn between and including towns of Lexington and Lumberville; also that portion of Montgomery County, Penna., south and east of line drawn between and including towns of Mont Clare and So. Hatfield; also Delaware and Philadelphia Counties, Penna.:	20.80	24.10	26.50	23.50	14.10	16.50	15.80	16.10	17.75
(b) Into Chester County, Penna.; also that portion of Bucks County, Penna., north and west of line drawn between but not including towns of Lexington and Lumberville; also that portion of Montgomery County, Penna., north and west of line drawn between but not including towns of Mont Clare and So. Hatfield:	20.85	24.20	26.65	23.65	14.20	16.65	15.85	16.20	17.90
(c) Into balance of Plymouth County, Mass., Bristol County, Mass. (except town of Mansfield), Worcester and Barnstable Counties, Mass.; also Rockinghanf and Strafford Counties, New Hampshire; also state of Rhode Island; also Fairfield County, Connecticut; also Orange and Putnam Counties, New York; also Sussex, Warren, Hunterdon, Ocean, Atlantic, Cape May and Cumberland Counties, New Jersey; also that portion of Burlington County, N. J., east of line extending from the southwest corner of Monmouth County to the northeast corner of Camden County; also that portion of New Castle County, Delaware, south of line extending through, but not including, towns of New Castle, Tasker, State Road and Audenried; also Cecil County, Maryland; also Lehigh, Northampton, Berks and Lancaster Counties, Penna.; also town of Milford (in Pike County), Penna.:	21.05	24.50	27.00	24.00	14.50	17.00	16.05	16.50	18.25
(d) Into Westchester, Rockland and Suffolk Counties, New York; Gloucester and Salem Counties, New Jersey; also that portion of New Castle County, Delaware, north of line extending through and including towns of New Castle, Tasker, State Road and Audenried:	20.90	24.30	26.75	23.75	14.30	16.75	15.90	16.30	18.00
(e) Into State of Connecticut (except Fairfield and Litchfield Counties):	21.20	24.65	27.25	24.25	14.65	17.25	16.20	16.65	18.50
9925 (f) Into Sullivan, Ulster and Dutchess Counties, New York, and Litchfield County, Connecticut; also towns of Stroudsburg and East Stroudsburg (in Monroe County), Penna.:	21.30	24.85	27.50	24.50	14.85	17.50	16.30	16.85	18.75

	1/4" Gypsum Wallboard	3/8" Gypsum Wallboard	1/2" Gypsum Wallboard	1/2" Gypsum Sheathing	3/8" Gypsum Plaster Lath	1/2" Gypsum Plaster Lath	1/4" Gypsum Liner Board	3/8" Gypsum Liner Board	1/2" Gypsum Liner Board
(g) Into Delaware, Greene and Columbia Counties, New York:	21.60	25.20	28.00	25.00	15.20	18.00	16.60	17.20	19.25
(h) Into Niagara and Erie Counties, New York (including town of Gowanda):	20.75	24.05	26.40	23.40	14.05	16.40	15.75	16.05	17.65
(i) Into Cook and DuPage Counties, Illinois; Lake County, Indiana; and towns of Deerfield, Highland Park, Blodgett, Briargate and Lake Forest, in Lake County, Illinois:	20.40	23.55	25.75	22.75	13.55	15.75	15.40	15.55	17.00
(j) Into McHenry, Kane and Lake Counties, Illinois (except towns of Deerfield, Highland Park, Blodgett, Briargate and Lake Forest):	20.55	23.75	26.00	23.00	13.75	16.00	15.55	15.75	17.25
(k) Into Wayne County, Michigan; towns of Birmingham, Clawson, Farmington, Ferndale, Hazel Park and Royal Oak in Oakland County, Michigan; and towns of Warren, Halfway, Fraser, Roseville, Saint Clair Shores, East Detroit, Van Dyke and Centerline in Macomb County, Michigan:	20.80	24.10	26.50	23.50	14.10	16.50	15.80	16.10	17.75
(l) Into Grand Rapids, Mich., Switching Area (as described in published railroad tariffs):	21.00	24.00	26.00	23.00	14.00	16.00	16.00	16.00	17.25
(m) Into Jacksonville and So. Jacksonville, Fla., Switching Area, where per car switching rates apply (as described in published railroad tariffs):	21.25	24.25	26.25	23.25	14.25	16.25	16.25	16.25	17.50
(n) Into Savannah and Port Wentworth, Georgia, Switching Limits where per car switching rates apply (as described in published railroad tariffs):	21.25	24.25	26.25	23.25	14.00	16.00	16.25	16.25	17.50
(o) Into Key West, Florida:	24.00	29.00			17.20				

9926 4. Minimum Prices in Markets Adjacent to Cities.

Minimum prices of patented gypsum board for delivery in the following markets adjacent to the following cities shall be:

Delivered Minimum Prices In—	*Same as—*
College Park, Ga.	Atlanta, Ga.
Elkridge, Glen Burnie, Catonsville, Riderwood and Towson, Maryland	Baltimore, Md.
Bristol, Tenn.	Bristol, Va.
Cheviot, Bridgetown, Mount Healthy and North College Hill, Ohio	Cincinnati, O.
Euclid, North Randall and Bedford, Ohio	Cleveland, O.
Dodson, Edgecomb, Waldo and Westport, Mo.; Rosedale, Argentine, Overland Park, Merriam and Kansas City, Kansas	Kansas City, Mo.
Saint Louis County and town of Imperial (in Jefferson County), Missouri	St. Louis, Mo.
Armory, Indian Orchard, Oak Street and Chicopee, Mass.	Springfield, Mass.
South Windham, Maine	Portland, Maine
Gabe, Shepard and Wilmont, Okla.	Oklahoma City, Okla.
Rosslyn and Lacy, Virginia, and Montgomery County, Md.	Washington, D. C.
Omaha, Nebraska	Council Bluffs, Ia.
Moline, East Moline and Rock Island, Illinois	Davenport, Iowa
Virginia Beach, Virginia	Norfolk, Va.
Boardman, Ohio	Youngstown, Ohio

5. Pick-up Prices at Mills or Warehouses.

Minimum prices of patented gypsum board per M sq. ft. f.o.b. trucks at mills and warehouses are as follows:

MILLS AND WAREHOUSES	1/4" Gypsum Wallboard	3/8" Gypsum Wallboard	1/2" Gypsum Wallboard	1/2" Gypsum Sheathing	3/8" Gypsum Plaster Lath	1/2" Gypsum Plaster Lath	1/4" Gypsum Liner Board	3/8" Gypsum Liner Board	1/2" Gypsum Liner Board
Texas	21.00	24.00	26.00	23.00	14.00	16.00	16.00	16.00	17.25
Boston, Mass.	20.80	24.10	26.50	23.50	14.10	16.50	15.80	16.10	17.75
Fort Dodge, Iowa	21.00	24.00	26.00	23.00	14.00	16.00	16.00	16.00	17.25
Grand Rapids, Mich.	21.00	24.00	26.00	23.00	14.00	16.00	16.00	16.00	17.25
Port Clinton, Ohio	21.00	24.00	26.00	23.00	14.00	16.00	16.00	16.00	17.25
Portsmouth, N. H.	21.05	24.50	27.00	24.00	14.50	17.00	16.05	16.50	18.25
Laramie, Wyoming	24.62	29.56			19.56			21.56	
Metro. N. Y.–N. J.	20.80	24.10	26.50	23.50	14.10	16.50	15.80	16.10	17.75

9927 6. Minimum Prices for Delivery by Truck:

Minimum prices for patented gypsum board per M sq. ft. when delivered by truck (truckloads containing 7500 sq. ft. or more) in the areas named below shall be the same as the prices heretofore named for delivery into such areas:

Eastern Area—which includes the States of New Jersey, Connecticut and Rhode Island; Essex, Middlesex, Suffolk, Norfolk, Worcester, Plymouth, Bristol and Barnstable Counties, Massachusetts; York and Cumberland Counties, Maine; Rockingham, Strafford, Belknap, Merrimac, Sullivan, Cheshire and Hillsborough Counties, New Hampshire; Manhattan, Bronx, Kings, Queens, Richmond, Nassau, Suffolk, Westchester, Rockland, Orange, Putnam, and Dutchess Counties, New York; Bucks, Montgomery, Chester, Delaware, Philadelphia, Lehigh and Northampton Counties, Pennsylvania; New Castle County, Delaware; towns of Stroudsburg and East Stroudsburg in Monroe County, and Town of Milford in Pike County, Pennsylvania.

Western New York Area—which includes Erie, Niagara, Orleans, Genesee, Monroe, Ontario, Wayne, Seneca, Wyoming, Cattaraugus, Chautauqua, Allegany, Steuben, Yates, Chemung, Schuyler and Livingston Counties, New York; also Crawford, Erie, McKean and Warren Counties, Pennsylvania.

Detroit Area—which includes Wayne County, Michigan; towns of Birmingham, Clawson, Farmington, Ferndale, Hazel Park and Royal Oak in Oakland County, Michigan; also towns of Warren, Halfway, Fraser, Roseville, Saint Clair Shores, East Detroit, Van Dyke and Centerline in Macomb County, Michigan.

7. Minimum Prices to Contractors—Consumers:

On sales to contractors, roofing contractors, metal ceiling contractors, prefabricated house manufacturers and other consumers, the minimum price shall be the minimum price as above established plus the following amounts per M sq. ft.:

To Contractors (Inc. Metal Ceiling Contrs.) & to Prefabricated House Mfrs. and Consumers Generally Std. Sizes		To Contractors for Use on Roof Decks Std. Sizes	
Wall Bd. & Sheathing	Lath & Liner	Wall Bd. & Sheathing	Lath & Liner
2.50	1.25	1.25	1.25

9928 8. Standard Size Products:

The minimum prices hereinabove established apply to sales of patented gypsum board in sizes suitable for use in construction and regularly manufactured and offered for sale for use in construction, which products are commonly known in the trade as standard size products and are as follows:

Thickness & Width	Lengths
(1) Square Edge Wallboard	
1/4" x 32" or 48"	4'-5'-6'-7'-8'-9'-10'-11' and 12'
3/8" x 32" or 48"	4'-5'-6'-7'-8'-9'-10'-11' and 12'
1/2" x 32" or 48"	4'-5'-6'-7'-8'-9'-10'-11' and 12'
1/2" x 36"	8'-9' and 10'
(2) T&G Edge Wallboard	
1/2" x 36" or 48"	8'-9' and 10'
(3) T&G Edge Sheathing	
1/2" x 24"	6'-8" and 8'
(4) Plaster Lath	
3/8" x 16"	32"-36" and 48"
1/2" x 16"	32"-36" and 48"
(5) Liner Board	
1/4" x 24"	32" and 48"
1/4" x 32"	36"
1/4" x 32"	48" (grey surfaced and round edged)
3/8" x 24"	32" and 48"
3/8" x 32"	36"
3/8" x 32"	48" (grey surfaced and round edged)
1/2" x 24"	32" and 48"
1/2" x 32"	36"
1/2" x 32"	48" (grey surfaced and round edged)
(6) Special Liner Board for Use on Specific Roof Jobs	
3/8" x 32" or 36"	48"
1/2" x 32" or 36"	48"

9. Non-Standard Size Products.

For sales of non-standard size products, minimum prices per M sq. ft. shall be the minimum price above established plus the following amounts per M sq. ft. (except that such amounts need not be added on sales of non-standard sizes to contractors for use on roof decks):

Wall Bd. & Sheathing	Lath & Liner
2.50	1.25

9929 Effective Date of Minimum Prices:

Advances in Minimum Prices:

In the event of an increase in the minimum prices of patented gypsum board products, the advanced minimum price

shall apply to all shipments made after the effective date of the price increase, except that the price in effect just prior to the advance in minimum price shall apply in the following instances:

(1) On bona fide orders for dealers' stocks actually received and accepted at your home office in writing before effective date of the price increase and shipped by you within 10 days after effective date of price increase.

(2) On sales of gypsum plaster lath to dealers for any specific job requiring not less than the minimum carload quantity of plaster lath (each building of a project to be considered as a separate specific job hereunder); and

On sales of gypsum wallboard or gypsum liner to gypsum roofing contractors for specific gypsum roof jobs; and

On sales of gypsum wallboard, gypsum sheathing or gypsum liner board to dealers for specific industrial housing projects; and

On sales of gypsum wallboard, gypsum sheathing or gypsum liner on direct bids to the federal government for specific federal government jobs;* but only where the general contract for such specific job is awarded prior to the effective date of the price increase, or where the dealer (or contractor on specific roof jobs) has made a written quotation on such job prior to the effective date of the price increase, and providing the order is placed by such dealer or contractor and accepted by the licensee within 30 days on private jobs, and 60 days on federal government jobs, after the effective date of the price increase.

(3) On orders received from the General Supply Committee of the Executive Departments and Independent Establishments of the United States Government under contract awarded by that committee, prior to the effective date of price increase.

Decreases in Minimum Price.

In the event of a decrease in the minimum prices of the patented gypsum board products, the new and lower minimum prices are applicable to all sales and shipments made after the effective date of the decrease in minimum price,

* NOTE: A Federal Government job is one where the Federal Government lets the contract to a general contractor or places an order directly with licensee.

including all orders for the patented gypsum board products on file at the time of decrease in minimum prices, and also shipments in transit; but licensee must be prepared to furnish licensor with satisfactory evidence of the fact that the shipment was actually in transit and not delivered when the price decrease became effective. Carrier's
9930 freight bill will be accepted as evidence of that fact.

Rebates, Allowances, Etc.:

Any sale of patented products, though ostensibly made at or above the minimum price established by licensor, will nevertheless be considered a violation of the provisions of the license if licensee directly or indirectly reduces the actual price charged by licensee below such minimum price by granting the customer rebates, unearned or unwarranted refunds, credits or discounts, by reducing the price of other products, by hiring customers' trucks, by granting allowances for advertising or other purposes, by splitting of salesmen's compensation or commissions with customers, by overshipment of patented products, by including board under the guise of dunnage, or by making any other payment or allowance in the form of money or otherwise which has for its purpose and effect reducing the price charged by licensee below such minimum price.

The minimum prices set forth herein pertain to existing conditions, and, as provided in the license agreement, Licensor has and reserves the right to change and alter such minimum prices from time to time.

UNITED STATES GYPSUM COMPANY,

Vice President.

9931

UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

JUNE 14, 1939.

MR. C. NEWMAN
Chicago

DEAR SIR: We understand that you are manufacturing or are about to manufacture at your Texas mill a 1/2" gypsum liner board weighing approximately 2050 lbs. per M sq. ft., 24"x80" square edge, using gray surfaced paper.

Referring to our license agreement with you, you are hereby notified that the minimum price at which you may sell such product embodying the inventions and improvements set forth and claimed in our letters patent under which you are licensed (not including applications for letters patent) shall be the following mill price plus carload rail freight from producing mill to destination of shipment. Carload rail freight may be equalized with carload rail freight from any of the Texas and Oklahoma producing mills listed below having a lower carload rail freight to such destination.

Producing Mills	Mill Price
Acme, Texas Hamlin (Plasterco or Plasterco Jot.) Texas Rotan, Texas Sweetwater, Texas Southard, Oklahoma	$16.25 per M sq. ft.

In computing the delivered minimum price hereunder, rail freight shall be determined in accordance with rail rates as published in regular freight tariffs, using the weight shown above, plus all stopover, switching, cartage and other extra delivery charges in connection with the shipment. In stopover cars, the minimum price of such patented gypsum board product in any portion of the car shall be the minimum price as herein defined to the point of delivery of that portion of the car.

Yours very truly,

UNITED STATES GYPSUM COMPANY,

Vice President.

9932 . 4. Minimum Prices in Markets Adjacent to Cities.

Minimum prices of patented gypsum board for delivery in the following markets adjacent to the following cities shall be:

Delivered Minimum Prices In—	*Same as—*
College Park, Ga.	Atlanta, Ga.
Elkridge, Glen Burnie, Catonsville, Riderwood and Towson, Maryland	Baltimore, Md.
Bristol, Tenn.	Bristol, Va.
†Cheviot and Bridgetown, Ohio	Cincinnati, O.
Euclid, North Randall and Bedford, Ohio	Cleveland, O.
Dodson, Edgecomb, Waldo and Westport, Mo.; Rosedale, Argentine, Overland Park, Merriam and Kansas City, Kansas	Kansas City, Mo.
Saint Louis County and town of Imperial (in Jefferson County), Missouri	St. Louis, Mo.
Armory, Indian Orchard, Oak Street and Chicopee, Mass.	Springfield, Mass.
South Windham, Maine	Portland, Maine
Gabe, Shepard and Wilmont, Okla.	Oklahoma City, Okla.
Rosslyn and Lacy, Virginia, and Montgomery County, Md.	Washington, D. C.
Omaha, Nebraska	Council Bluffs, Ia.
Moline, East Moline and Rock Island, Illinois	Davenport, Iowa
Virginia Beach, Virginia	Norfolk, Va.
Boardman, Ohio	Youngstown, Ohio

5. Pick-up Prices at Mills or Warehouses.

Minimum prices of patented gypsum board per M sq. ft. f.o.b. trucks at mills and warehouses are as follows:

Mills and Warehouses	1/4" Gypsum Wallboard	3/8" Gypsum Wallboard	1/2" Gypsum Wallboard	1/2" Gypsum Sheathing	3/8" Gypsum Plaster Lath	1/2" Gypsum Plaster Lath	1/4" Gypsum Liner Board	3/8" Gypsum Liner Board	1/2" Gypsum Liner Board
Texas	21.00	24.00	26.00	23.00	14.00	16.00	16.00	16.00	17.25
Boston, Mass.	20.80	24.10	26.50	23.50	14.10	16.50	15.80	16.10	17.75
Fort Dodge, Iowa...	21.00	24.00	26.00	23.00	14.00	16.00	16.00	16.00	17.25
Grand Rapids, Mich.	21.00	24.00	26.00	23.00	14.00	16.00	16.00	16.00	17.25
Port Clinton, Ohio..	21.00	24.00	26.00	23.00	14.00	16.00	16.00	16.00	17.25
Portsmouth, N. H. ..	21.05	24.50	27.00	24.00	14.50	17.00	16.05	16.50	18.25
Laramie, Wyoming ..	24.62	29.56			19.56			21.35	
Metro. N. Y.–N. J..	20.80	24.10	26.50	23.50	14.10	16.50	15.80	16.10	17.75

9983 †3. Minimum Prices in Delivered Price Areas (Cont'd)

	1/4" Gypsum Wallboard	3/8" Gypsum Wallboard	1/2" Gypsum Wallboard	1/2" Gypsum Sheathing	3/8" Gypsum Plaster Lath	1/2" Gypsum Plaster Lath	1/4" Gypsum Liner Board	3/8" Gypsum Liner Board	1/2" Gypsum Liner Board
†(a) Into Essex, Middlesex, Suffolk and Norfolk Counties, Mass., that portion of Plymouth County, Mass., north of continuation of southern boundary of Norfolk County, and town of Mansfield, Mass., also Rockingham and Strafford Counties, New Hampshire; also Manhattan, Bronx, Kings, Queens, Richmond and Nassau Counties, New York, also Hudson, Essex, Bergen, Passaic, Union, Morris, Somerset, Middlesex, Monmouth, Mercer and Camden Counties, New Jersey; also that portion of Burlington County, N. J., west of line extending from the southwest corner of Monmouth County to the northeast corner of Camden County; also that portion of Bucks County, Penna., south and east of line drawn between and including towns of Lexington and Lumberville; also that portion of Montgomery County, Penna., south and east of line drawn between and including towns of Mont Clare and So. Hatfield; also Delaware and Philadelphia Counties, Penna.:	20.80	24.10	26.50	23.50	14.10	16.50	15.80	16.10	17.75
(b) Into Chester County, Penna.; also that portion of Bucks County, Penna., north and west of line drawn between but not including towns of Lexington and Lumberville; also that portion of Montgomery County, Penna., north and west of line drawn between but not including towns of Mont Clare and So. Hatfield:	20.85	24.20	26.65	23.65	14.20	16.65	15.85	16.20	17.90
†(c) Into balance of Plymouth County, Mass., Bristol County, Mass. (except town of Mansfield), Worcester and Barnstable Counties, Mass.; also state of Rhode Island; also Fairfield County, Connecticut; also Orange and Putnam Counties, New York; also Sussex, Warren, Hunterdon, Ocean, Atlantic, Cape May and Cumberland Counties, New Jersey; also that portion of Burlington County, N. J., east of line extending from the southwest corner of Monmouth County to the northeast corner of Camden County; also that portion of New Castle County, Delaware, south of line extending through, but not including, towns of New Castle, Tasker, State Road and Audenried; also Cecil County, Maryland; also Lehigh, Northampton, Berks and Lancaster Counties, Penna.; also town of Milford (in Pike County), Penna.:	21.05	24.50	27.00	24.00	14.50	17.00	16.05	16.50	18.25
(d) Into Westchester, Rockland and Suffolk Counties, New York; Gloucester and Salem Counties, New Jersey; also that portion of New Castle County, Delaware, north of line extending through and including towns of New Castle, Tasker, State Road and Audenried:	20.90	24.30	26.75	23.75	14.30	16.75	15.90	16.30	18.00
(e) Into State of Connecticut (except Fairfield and Litchfield Counties):	21.20	24.65	27.25	24.25	14.65	17.25	16.20	16.65	18.50

† Indicates change effective September 1, 1939.

9934	1/4" Gypsum Wallboard	3/8" Gypsum Wallboard	1/2" Gypsum Wallboard	1/2" Gypsum Sheathing	3/8" Gypsum Plaster Lath	1/2" Gypsum Plaster Lath	1/4" Gypsum Liner Board	3/8" Gypsum Liner Board	1/2" Gypsum Liner Board
(f) Into Sullivan, Ulster and Dutchess Counties, New York, and Litchfield County, Connecticut; also towns of Stroudsburg and East Stroudsburg (in Monroe County), Penna.:	21.30	24.85	27.50	24.50	14.85	17.50	16.30	16.85	18.75
(g) Into Delaware, Greene and Columbia Counties, New York:	21.60	25.20	28.00	25.00	15.20	18.00	16.60	17.20	19.25
(h) Into Niagara and Erie Counties, New York (including town of Gowanda):	20.75	24.05	26.40	23.40	14.05	16.40	15.75	16.05	17.65
(i) Into Cook and DuPage Counties, Illinois; Lake County, Indiana; and towns of Deerfield, Highland Park, Blodgett, Briargate and Lake Forest, in Lake County, Illinois:	20.40	23.55	25.75	22.75	13.55	15.75	15.40	15.55	17.00
(j) Into McHenry, Kane and Lake Counties, Illinois (except towns of Deerfield, Highland Park, Blodgett, Briargate and Lake Forest):	20.55	23.75	26.00	23.00	13.75	16.00	15.55	15.75	17.25
(k) Into Wayne County, Michigan; towns of Birmingham, Clawson, Farmington, Ferndale, Hazel Park and Royal Oak in Oakland County, Michigan; and towns of Warren, Halfway, Fraser, Roseville, Saint Clair Shores, East Detroit, Van Dyke and Centerline in Macomb County, Michigan:	20.80	24.10	26.50	23.50	14.10	16.50	15.80	16.10	17.75
(l) Into Grand Rapids, Mich. Switching Area (as described in published railroad tariffs):	21.00	24.00	26.00	23.00	14.00	16.00	16.00	16.00	17.25
(m) Into Jacksonville and So. Jacksonville, Fla. Switching Area, where per car switching rates apply (as described in published railroad tariffs):	21.25	24.25	26.25	23.25	14.25	16.25	16.25	16.25	17.50
(n) Into Savannah and Port Wentworth, Georgia, Switching Limits where per car switching rates apply (as described in published railroad tariffs):	21.25	24.25	26.25	23.25	14.00	16.00	16.25	16.25	17.50
(o) Into Key West, Florida:	23.89†	28.52†			17.76†				

† Indicates change effective September 1, 1939.

9935 4. Minimum Prices in Markets Adjacent to Cities.

Minimum prices of patented gypsum board for delivery in the following markets adjacent to the following cities shall be:

Delivered Carload Minimum Prices in—	*Same as—*
College Park, Ga.	Atlanta, Ga.
Elkridge, Glen Burnie, Catonsville, Riderwood and Towson, Maryland	Baltimore, Md.
Bristol, Tenn.	Bristol, Va.
Cheviot and Bridgetown, Ohio	Cincinnati, O.
Euclid, North Randall and Bedford, Ohio	Cleveland, O.
Dodson, Edgecomb, Waldo and Westport, Mo.; Rosedale, Argentine, Overland Park, Merriam and Kansas City, Kansas	Kansas City, Mo.
Saint Louis County and town of Imperial (in Jefferson County), Missouri	St. Louis, Mo.
Armory, Indian Orchard, Oak Street and Chicopee, Mass.	Springfield, Mass.
South Windham, Maine	Portland, Maine
Gabe, Shepard and Wilmont, Okla.	Oklahoma City, Okla.
Rosslyn and Lacy, Virginia, and Montgomery County, Md.	Washington, D. C.
Omaha, Nebraska	Council Bluffs, Ia.
Moline, East Moline and Rock Island, Illinois	Davenport, Iowa.
Virginia Beach, Virginia	Norfolk, Va.
Boardman, Ohio	Youngstown, Ohio

†5. Pick-up Prices at Mills or Warehouses.

Minimum prices of patented gypsum board per M sq. ft. f.o.b. trucks at mills and warehouses are as follows:

Mills and Warehouses	1/4" Gypsum Wallboard	3/8" Gypsum Wallboard	1/2" Gypsum Wallboard	1/2" Gypsum Sheathing	3/8" Gypsum Plaster Lath	1/2" Gypsum Plaster Lath	1/4" Gypsum Liner Board	3/8" Gypsum Liner Board	1/2" Gypsum Liner Board
Texas	21.00	24.00	26.00	23.00	14.00	16.00	16.00	16.00	17.25
Fort Dodge, Iowa...	21.00	24.00	26.00	23.00	14.00	16.00	16.00	16.00	17.25
Grand Rapids, Mich.	21.00	24.00	26.00	23.00	14.00	16.00	16.00	16.00	17.25
Port Clinton, Ohio.	21.00	24.00	26.00	23.00	14.00	16.00	16.00	16.00	17.25
Laramie, Wyoming .	24.62	29.56			19.56			21.35	
Metro. N. Y.–N. J.	20.80	24.10	26.50	23.50	14.10	16.50	15.80	16.10	17.75

† Indicates change.

9936 3. Minimum Prices in Delivered Price Areas (Cont'd)

	1/4"e Gypsum Wallboard	3/8" Gypsum Wallboard	1/2" Gypsum Wallboard	1/2" Gypsum Sheathing	3/8" Gypsum Plaster Lath	1/2" Gypsum Plaster Lath	1/4" Gypsum Liner Board	3/8" Gypsum Liner Board	1/2" Gypsum Liner Board
(f) Into Sullivan, Ulster and Dutchess Counties, New York, and Litchfield County, Connecticut; also towns of Stroudsburg and East Stroudsburg (in Monroe County), Penna.:	21.30	24.85	27.50	24.50	14.85	17.50	16.30	16.85	18.75
(g) Into Delaware, Greene and Columbia Counties, New York:	21.60	25.20	28.00	25.00	15.20	18.00	16.60	17.20	19.25
(h) Into Niagara and Erie Counties, New York (including town of Gowanda):	20.75	24.05	26.40	23.40	14.05	16.40	15.75	16.05	17.65
(i) Into Cook and DuPage Counties, Illinois; Lake County, Indiana; and towns of Deerfield, Highland Park, Blodgett, Briargate and Lake Forest, in Lake County, Illinois:	20.40	23.55	25.75	22.75	13.55	15.75	15.40	15.55	17.00
(j) Into McHenry, Kane and Lake Counties, Illinois (except towns of Deerfield, Highland Park, Blodgett, Briargate and Lake Forest):	20.55	23.75	26.00	23.00	13.75	16.00	15.55	15.75	17.25
(k) Into Wayne County, Michigan; towns of Birmingham, Clawson, Farmington, Ferndale, Hazel Park and Royal Oak in Oakland County, Michigan; and towns of Warren, Halfway, Fraser, Roseville, Saint Clair Shores, East Detroit, Van Dyke and Centerline in Macomb County, Michigan:	20.80	24.10	26.50	23.50	14.10	16.50	15.80	16.10	17.75
(l) Into Grand Rapids, Mich. Switching Area (as described in published railroad tariffs):	21.00	24.00	26.00	23.00	14.00	16.00	16.00	16.00	17.25
(m) Into Jacksonville and So. Jacksonville, Fla. Switching Area, where per car switching rates apply (as described in published railroad tariffs):	21.25	24.25	26.25	23.25	14.25	16.25	16.25	16.25	17.50
(n) Into Savannah and Port Wentworth, Georgia, Switching Limits where per car switching rates apply (as described in published railroad tariffs):	21.25	24.25	26.25	23.25	14.00	16.00	16.25	16.25	17.50
(o) Into Key West, Florida:	23.89	28.52	——	——	17.76	——	——	——	——
(p) Into Milwaukee, Wisc. Switching Area (as described in published railroad tariffs), also towns of Butler and West Allis, Wisc.:	——	——	——	——	14.98	——	——	——	——

† Indicates change effective October 2, 1939.

9937 4. Minimum Prices in Markets Adjacent to Cities.

Minimum prices of patented gypsum board for delivery in the following markets adjacent to the following cities shall be:

Delivered Minimum Prices In—	*Same as—*
College Park, Ga.	Atlanta, Ga.
Elkridge, Glen Burnie, Catonsville, Riderwood and Towson, Maryland	Baltimore, Md.
Bristol, Tenn.	Bristol, Va.
Cheviot and Bridgetown, Ohio	Cincinnati, Ohio
Euclid, North Randall and Bedford, Ohio	Cleveland, Ohio
Dodson, Edgecomb, Waldo and Westport, Mo.; Rosedale, Argentine, Overland Park, Merriam and Kansas City, Kansas	Kansas City, Mo.
Saint Louis County and town of Imperial (in Jefferson County), Missouri	St. Louis, Mo.
Armory, Indian Orchard, Oak Street and Chicopee, Mass.	Springfield, Mass.
South Windham, Maine	Portland, Maine
Gabe, Shepard and Wilmont, Okla.	Oklahoma City, Okla.
Rosslyn and Lacy, Virginia, and Montgomery County, Maryland	Washington, D. C.
Omaha, Nebraska	Council Bluffs, Ia.
Moline, East Moline and Rock Island, Illinois	Davenport, Iowa
Virginia Beach, Virginia	Norfolk, Va.
Boardman, Ohio	Youngstown, Ohio

5. Pick-up Prices at Mills or Warehouses.

Minimum prices of patented gypsum board per M sq. ft. f.o.b. trucks at mills and warehouses are as follows:

Mills and Warehouses	1/4" Gypsum Wallboard	3/8" Gypsum Wallboard	1/2" Gypsum Wallboard	1/2" Gypsum Sheathing	3/8" Gypsum Plaster Lath	1/2" Gypsum Plaster Lath	1/4" Gypsum Liner Board	3/8" Gypsum Liner Board	1/2" Gypsum Liner Board
Texas	21.00	24.00	26.00	23.00	14.00	16.00	16.00	16.00	17.25
Fort Dodge, Iowa	21.00	24.00	26.00	23.00	14.00	16.00	16.00	16.00	17.25
Grand Rapids, Mich.	21.00	24.00	26.00	23.00	14.00	16.00	16.00	16.00	17.25
Laramie, Wyoming	24.62	29.56			19.56			21.56	
Metro. N. Y.–N. J.	20.80	24.10	26.50	23.50	14.10	16.50	15.80	16.10	17.75

† Indicates change.

9938 †4. Minimum Prices in Markets Adjacent to Cities.

Minimum prices of patented gypsum board for delivery in the following markets adjacent to the following cities shall be:

Delivered Minimum Prices In—	*Same as—*
Elkridge, Glen Burnie, Catonsville, Riderwood and Towson, Maryland	Baltimore, Md.
Bristol, Tenn.	Bristol, Va.
Cheviot and Bridgetown, Ohio	Cincinnati, Ohio
North Randall, Ohio	Cleveland, Ohio
Dodson, Edgecomb, Waldo and Westport, Mo.; Overland Park and Merriam, Kansas	Kansas City, Mo.
Saint Louis County and town of Imperial (in Jefferson County), Missouri	St. Louis, Mo.
Armory and Indian Orchard, Mass.	Springfield, Mass.
South Windham, Maine	Portland, Maine
Gabe, Shepard and Wilmont, Okla.	Oklahoma City, Okla.
Rosslyn and Lacy, Virginia, and Montgomery County, Maryland	Washington, D. C.
Omaha, Nebraska	Council Bluffs, Ia.
Moline, East Moline and Rock Island, Illinois	Davenport, Iowa
Virginia Beach, Virginia	Norfolk, Va.
Boardman, Ohio	Youngstown, Ohio
Algiers, Gretna and Marrero, La.	New Orleans, La.

†5. Pick-up Prices at Mills or Warehouses.

Minimum prices of patented gypsum board per M sq. ft. f.o.b. trucks at mills and warehouses are as follows:

Mills and Warehouses	1/4" Gypsum Wallboard	3/8" Gypsum Wallboard	1/2" Gypsum Wallboard	1/2" Gypsum Sheathing	3/8" Gypsum Plaster Lath	1/2" Gypsum Plaster Lath	1/4" Gypsum Liner Board	3/8" Gypsum Liner Board	1/2" Gypsum Liner Board
Fort Dodge, Iowa...	21.00	24.00	26.00	23.00	14.00	16.00	16.00	16.00	17.25
Grand Rapids, Mich.	21.00	24.00	26.00	23.00	14.00	16.00	16.00	16.00	17.25
Laramie, Wyoming	24.62	29.56			19.56			21.56	
Metro. N. Y.–N. J..	20.60	24.10	26.50	23.50	14.10	16.50	15.80	16.10	17.75

† Indicates change.

9939 †6. Minimum Prices for Delivery by Truck:

Minimum prices for patented gypsum board per M sq. ft. when delivered by truck (truckloads containing 7500 sq. ft. or more) in the areas named below shall be the same as the prices heretofore named for delivery into such areas:

†Eastern Area—which includes the States of New Jersey, Connecticut and Rhode Island; Essex, Middlesex, Suffolk, Norfolk, Worcester, Plymouth, Bristol and Barnstable Counties, Massachusetts; York and Cumberland Counties, Maine; Rockingham, Strafford, Belknap, Merrimac, Sullivan, Cheshire and Hillsborough Counties, New Hampshire; Manhattan, Bronx, Kings, Queens, Richmond, Nassau, Suffolk, Westchester, Rockland, Orange, Putnam, Ulster, Sullivan and Dutchess Counties, New York; Bucks, Montgomery, Chester, Delaware, Philadelphia, Lehigh and Northampton Counties, Pennsylvania; New Castle County, Delaware; towns of Stroudsburg and East Stroudsburg in Monroe County, and town of Milford in Pike County, Pennsylvania.

Western New York Area—which includes Erie, Niagara, Orleans, Genesee, Monroe, Ontario, Wayne, Seneca, Wyoming, Cattaraugus, Chautauqua, Allegany, Steuben, Yates, Chemung, Schuyler and Livingston Counties, New York; also Crawford, Erie, McKean and Warren Counties, Pennsylvania.

Detroit Area—which includes Wayne County, Michigan; towns of Birmingham, Clawson, Farmington, Ferndale, Hazel Park and Royal Oak in Oakland County, Michigan; also towns of Warren, Halfway, Fraser, Roseville, Saint Clair Shores, East Detroit: Van Dyke and Centerline in Macomb County, Michigan.

7. Minimum Prices to Contractors—Consumers:

On sales to contractors, roofing contractors, metal ceiling contractors, prefabricated house manufacturers and other consumers, the minimum price shall be the minimum price as above established plus the following amounts per M sq. ft.:

† Indicates change.

To Contractors (Incl. Metal Ceiling Contrs.) & to Prefabricated House Mfrs. and Consumers Generally		To Contractors for Use on Roof Decks	
Std. Sizes		Std. Sizes	
Wall Bd. & Sheathing	Lath & Liner	Wall Bd. & Sheathing	Lath & Liner
2.50	1.25	1.25	1.25

9940 *Government's Exhibit No. 34*

UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

FEBRUARY 6, 1939.

C. NEWMAN

Prices F.O.B. Trucks at Mills & Warehouses
Board License Bulletin No. 2 (Page 1)—Cancels Page 1
Dated August 16, 1938

DEAR SIR: Referring to our license contract with you, you are hereby notified that effective February 7, 1939, the minimum prices at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our prices under which you are licensed (not including applications for letters patent), are as follows:

Minimum prices per M sq. ft. at which you may sell patented gypsum board products f.o.b. trucks at mills and warehouses (Truckloads containing 7500 sq. ft. or more) are as follows:

	1/4" Gypsum Wallboard (Wt. 1050# per M)	3/8" Gypsum Wallboard (Wt. 1475# per M)	1/2" Gypsum Wallboard (Wt. 2000# per M)	1/2" Gypsum Sheathing (Wt. 2000# per M)	3/8" Tiled Gypsum Wallbd. (Wt. 1475# per M)	3/8" Gypsum Plaster Lath (Wt. 1475# per M)	1/2" Gypsum Plaster Lath (Wt. 2000# per M)	1/4" Gypsum Liner Bd. (Wt. 1050# per M)	3/8" Gypsum Liner Bd. (Wt. 1475# per M)	1/2" Gypsum Liner Bd. (Wt. 2000# per M)
Texas Mills	21.00	24.00	26.00	23.00	51.00	14.00	16.00	16.00	16.00	17.25
Boston, Mass.	20.80	24.10	26.50	23.50	51.10	14.10	16.50	15.80	16.10	17.75
Cleveland, Ohio	— —	— —	— —	— —	— —	16.00	— —	— —	— —	— —
Ft. Dodge, Iowa Mills	21.00	24.00	26.00	23.00	51.00	14.00	16.00	16.00	16.00	17.25
Grand Rapids, Mich. Mills	21.00	24.00	26.00	23.00	51.00	14.00	16.00	16.00	16.00	17.25
Port Clinton—Gypsum; Ohio Mills	21.00	24.00	26.00	23.00	51.00	14.00	16.00	16.00	16.00	17.25
Heath, Montana	20.00	23.00	25.00	22.00	50.00	13.00	15.00	15.00	15.00	16.25
Laramie, Wyo.	24.55	29.35	— —	— —	56.35	19.35	— —	— —	21.35	— —
Loveland, Colo.	24.55	29.35	— —	30.60	56.35	19.35	— —	— —	21.35	— —
Metro. NY–NJ Whses.	20.80	24.10	26.50	23.50	51.10	14.10	16.50	15.80	16.10	17.75
Milwaukee, Wisc.	— —	— —	— —	— —	— —	15.67	— —	— —	— —	— —
Nat'l. City, Mich.	21.00	24.00	26.00	23.00	51.00	14.00	16.00	16.00	16.00	17.25
Western N.Y Mills & Whses.	20.75	24.05	26.40	23.40	51.05	14.05	16.40	15.75	16.05	17.65
Philadelphia, Pa. Area	20.80	24.10	26.50	23.50	51.10	14.10	16.50	15.80	16.10	17.75
Piedmont, S. D.	24.10	28.75	32.80	— —	— —	18.75	— —	— —	— —	— —
Plasterco, Va.	21.00	24.00	26.00	23.00	51.00	14.00	16.00	16.00	16.00	17.25
Portsmouth, N. H.	21.05	24.50	27.00	24.00	51.50	14.50	17.00	16.05	16.50	18.25
Southard, Okla.	21.00	24.00	26.00	23.00	51.00	14.00	16.00	16.00	16.00	17.25

On sales to contractors, roofing contractors, metal
9941 ceiling contractors, prefabricated house manufacturers and consumers, and sales of odd or non-standard sizes, the minimum price at which you may sell for delivery f.o.b. trucks at mills and warehouses shall be the minimum prices established above plus the same amounts shown in Bulletin #2 for such sales for delivery by rail.

Very truly yours,

UNITED STATES GYPSUM COMPANY,

Vice President.

9942 UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

AUGUST 16, 1938.

Prices F.O.B. Trucks at Mills & Warehouses—
Board License Bulletin No. 2 (Page 1)—Cancels Page 1
Dated May 27, 1938.

MR. C. NEWMAN
Chicago Office

DEAR SIR: Referring to our license contract with you, you are hereby notified that effective August 18, 1938, the minimum prices at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent), including Haggerty patent number 1,500,452 are as follows:

Dealer Prices f.o.b. Trucks, Mills or Whses. (Applying for Standard Sizes as listed in Bulletin No. 4)	1/4" Gypsum Wallboard (Wt. 1050 # per M)	3/8" Gypsum Wallboard (Wt. 1475 # per M)	1/2" Gypsum Wallboard (Wt. 2000 # per M)	1/2" Gypsum Sheathing (Wt. 2000 # per M)	3/4" Gypsum Wallboard (Wt. 3300 # per M)	3/8" Tiled Gypsum Wallbd. (Wt. 1475 # per M)	3/8" Gypsum Plaster Lath (Wt. 1475 # per M)	1/2" Gypsum Plaster Lath (Wt. 2000 # per M)	1/4" Gypsum Liner Board (Wt. 1050 # per M)	3/8" Gypsum Liner Board (Wt. 1475 # per M)	1/2" Gypsum Liner Board (Wt. 2000 # per M)
Acme, Texas	21.00	24.00	26.00	23.00	— —	51.00	14.00	16.00	16.00	16.00	17.25
*Boston, Mass.	20.80	24.10	26.50	23.50	— —	51.10	14.10	16.50	15.80	16.10	17.75
Cleveland, Ohio	— —	— —	— —	— —	— —	— —	16.00	— —	— —	— —	— —
†Eldorado, Okla.	(Discontinued)										
Fort Dodge, Iowa	21.00	24.00	26.00	23.00	37.50	51.00	14.00	16.00	16.00	16.00	17.25
Grand Rapids, Mich.	21.00	24.00	26.00	23.00	— —	51.00	14.00	16.00	16.00	16.00	17.25
Gypsum, Ohio	21.00	24.00	26.00	23.00	37.50	51.00	14.00	16.00	16.00	16.00	17.25
Heath, Montana	20.00	23.00	25.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
Kansas City, Mo.	— —	— —	— —	— —	— —	56.78	— —	— —	— —	— —	— —
Laramie, Wyo.	24.55	29.35	— —	— —	— —	56.35	19.35	— —	— —	21.35	— —
Loveland, Colo.	24.55	29.35	— —	30.60	— —	56.35	19.35	— —	— —	21.35	— —
*Metro N. Y.—N. J. Whses.	20.80	24.10	26.50	23.50	— —	51.10	14.10	16.50	15.80	16.10	17.75
Miami, Fla.	— —	— —	— —	— —	— —	— —	17.50	— —	— —	— —	— —
Milwaukee, Wisc.	— —	— —	— —	— —	— —	— —	15.67	— —	— —	— —	— —
National City, Mich.	21.00	24.00	26.00	23.00	— —	51.00	14.00	16.00	16.00	16.00	17.25
*Oakfield, N. Y.	20.75	24.05	26.40	23.40	38.80	51.05	14.05	16.40	15.75	16.05	17.65
*Philadelphia, Pa.	20.80	24.10	26.50	23.50	— —	51.10	14.10	16.50	15.80	16.10	17.75
Piedmont, S. D.	24.10	28.75	32.80	— —	— —	— —	18.75	— —	— —	— —	— —
Plasterco, Va.	21.00	24.00	26.00	23.00	— —	51.00	14.00	16.00	16.00	16.00	17.25
*Portsmouth, N. H.	21.05	24.50	27.00	24.00	— —	51.50	14.50	17.00	16.05	16.50	18.25
Southard, Okla.	21.00	24.00	26.00	23.00	37.50	51.00	14.00	16.00	16.00	16.00	17.25
Sweetwater, Tex.	21.00	24.00	26.00	23.00	— —	51.00	14.00	16.00	16.00	16.00	17.25

* Minimum pickup 7500 sq. ft. patented gypsum board products. Note: Any mixture of regular patented board products (including special surfaced gypsum board products).

9943 The above prices apply to the sale of all board embodying the claims of our patents in all markets except where an exception is made as follows:

(1) 32"x48" Gypsum Board—if grey surfaced and round edged, is subject to the minimum liner board price, to any destination. Square edge or cutstock gypsum board in size 32"x48" is subject to the minimum wallboard price, except where used for specific roof jobs only, size 32"x48" cutstock board is subject to the minimum liner board price for such specific jobs.

(2) 36"x48" Gypsum Board—36"x48" is standard liner board size in all states for use on specific gypsum roof jobs only, and is subject to minimum liner board price for such specific gypsum roof jobs.

(3) Sales to contractors and prefabricated house manufacturers, also extras on odd sizes:

(a) On sales of standard sizes to contractors, roofing contractors, metal ceiling contractors and prefabricated house manufacturers, add differentials per M sq. ft. as follows: (Note: Sales to roofing contractors are for specific roof jobs only):

To Contractors (Incl. Metal Ceiling Contrs.) and to Prefabricated House Mfrs. Std. Sizes		To Roofing Contractors Std. Sizes	
Wall Bd. & Sheathing	Lath & Liner	Wall Bd. & Sheathing	Lath & Liner
2.50	1.25	1.25	1.25

(b) On sales of odd sizes to dealers, contractors, roofing contractors, metal ceiling contractors and prefabricated house manufacturers, add differentials per M sq. ft. as follows: (Note: Sales to roofing contractors are for specific roof jobs only):

To Dealers Odd Sizes		To Contractors (Inc. Metal Ceiling Contrs.) & to Prefabricated House Mfrs. Odd Sizes		To Roofing Contractors Odd Sizes	
Wall Bd. & Sheathing	Lath & Liner	Wall Bd. & Sheathing	Lath & Liner	Wall Bd. & Sheathing	Lath & Liner
2.50	1.25	5.00	2.50.	1.25	1.25

Yours very truly,

UNITED STATES GYPSUM COMPANY,

Vice President.

† Indicates changes in this reissue.

9944 UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

MAY 27, 1938.

Prices F.O.B. Trucks at Mills & Warehouses—Board License Bulletin No. 2 (Page 1)—Cancels Page 1 Dated April 1, 1938.

MR. C. NEWMAN
Chicago.

DEAR SIR: Referring to our license contract with you, you are hereby notified that effective June 1, 1938, the minimum prices at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent), including Haggerty patent number 1,500,452 are as follows:

Dealer Prices f.o.b. Trucks, Mills or Whses. (Applying for Standard Sizes as listed in Bulletin No. 4)	1/4" Gypsum Wallboard (Wt. 1050 # per M)	3/8" Gypsum Wallboard (Wt. 1475 # per M)	1/2" Gypsum Wallboard (Wt. 2000 # per M)	1/2" Gypsum Sheathing (Wt. 2000 #- per M)	3/4" Gypsum Wallboard (Wt. 3300 # per M)	3/8" Tiled Gypsum Wallbd. (Wt. 1475 # per M)	3/8" Gypsum Plaster Lath (Wt. 1475 # per M)	1/2" Gypsum Plaster Lath (Wt. 2000 # per M),	1/4" Gypsum Liner Board (Wt. 1050 # per M)	3/8" Gypsum Liner Board (Wt. 1425 # per M)	1/2" Gypsum Liner Board (Wt 2000 # per M)
Acme, Texas	21.00	24.00	26.00	23.00	— —	51.00	14.00	16.00	16.00	16.00	17.25
*Boston, Mass.	20.80	24.10	26.50	23.50	— —	51.10	14.10	16.50	15.80	16.10	17.75
Cleveland, Ohio	— —	— —	— —	— —	— —	— —	16.00	— —	— —	— —	— —
Eldorado, Okla.	21.00	24.00	26.00	23.00	— —	51.00	14.00	— —	16.00	16.00	17.25
Fort Dodge, Iowa	21.00	24.00	26.00	23.00	37.50	51.00	14.00	16.00	16.00	16.00	17.25
Grand Rapids, Mich.	21.00	24.00	26.00	23.00	— —	51.00	14.00	16.00	16.00	16.00	17.25
Gypsum, Ohio	21.00	24.00	26.00	23.00	37.50	51.00	14.00	16.00	16.00	16.00	17.25
Heath, Montana	20.00	23.00	25.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
Kansas City, Mo.	— —	— —	— —	— —	— —	56.78	— —	— —	— —	— —	— —
Laramie, Wyo.	24.55	29.35	— —	— —	— —	56.35	19.35	— —	— —	21.35	— —
Loveland, Colo.	24.55	29.35	— —	30.60	— —	56.35	19.35	— —	— —	21.35	— —
*Metro, N. Y.-N. J. Whses.	20.80	24.10	26.50	23.50	— —	51.10	14.10	16.50	15.80	16.10	17.75
Miami, Fla.	— —	— —	— —	— —	— —	— —	17.50	— —	— —	— —	— —
Milwaukee, Wisc.	— —	— —	— —	— —	— —	— —	15.67	— —	— —	— —	— —
National City, Mich.	21.00	24.00	26.00	23.00	— —	51.00	14.00	16.00	16.00	16.00	17.25
*Oakfield, N. Y.	20.75	24.05	26.40	23.40	38.80	51.05	14.05	16.40	15.75	16.05	17.65
*Philadelphia, Pa.	20.80	24.10	26.50	23.50	— —	51.10	14.10	16.50	15.80	16.10	17.75
Piedmont, S. D.	24.10	28.75	32.80	— —	— —	— —	18.75	— —	— —	— —	— —
Plasterco, Va.	21.00	24.00	26.00	23.00	— —	51.00	14.00	16.00	16.00	16.00	17.25
†*Portsmouth, N. H.	21.05†	24.50†	27.00†	24.00†	— —	51.50†	14.50†	17.00†	16.05†	16.50†	18.25†
Southard, Okla.	21.00	24.00	26.00	23.00	37.50	51.00	14.00	16.00	16.00	16.00	17.25
Sweetwater, Texas	†21.00	24.00	26.00	23.00	— —	51.00	14.00	16.00	16.00	16.00	17

* Minimum pickup 7500 sq. ft. patented gypsum board products. Note: Any mixture of regular patented board products (including special surfaced gypsum board products).

† Indicates change to become effective June 1, 1938.

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9945

UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

APRIL 1, 1938.

Prices F.O.B. Trucks at Mills & Warehouses—Board License Bulletin No. 2 (Page 1)—Cancels Page 1 Dated March 15, 1938.

MR. C. NEWMAN
Chicago Office

DEAR SIR: Referring to our license contract with you, you are hereby notified that effective April 5, 1938, the minimum prices at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent), including Haggerty patent number 1,500,452 are as follows:

Dealer Prices f.o.b. Trucks, Mills or Whses. (Applying for Standard Sizes as listed in Bulletin No. 4)	1/4" Gypsum Wallboard (Wt. 1050 # per M)	3/8" Gypsum Wallboard (Wt. 1475 # per M)	1/2" Gypsum Wallboard (Wt. 2000 # per M)	1/2" Gypsum Sheathing (Wt. 2000 # per M)	3/4" Gypsum Wallboard (Wt. 3300 # per M)	3/8" Filed Gypsum Wallbd. (Wt. 1475 #. per M)	3/8" Gypsum Plaster Lath (Wt. 1475 # per M)	1/2" Gypsum Plaster Lath (Wt. 2000 # per M)	1/4" Gypsum Liner Board (Wt. 1050 # per M)	3/8" Gypsum Liner Board (Wt. 1475 # per M)	1/2" Gypsum Liner Board (Wt. 2000 # per M)
Acme, Texas	21.00	24.00	26.00	23.00	— —	51.00	14.00	16.00	16.00	16.00	17.25
*Boston, Mass.	20.80	24.10	26.50	23.50	— —	51.10	14.10	16.50	15.80	16.10	17.75
Cleveland	— —	— —	— —	— —	— —	— —	16.00	— —	— —	— —	— —
Eldorado, Okla.	21.00	24.00	26.00	23.00	— —	51.00	14.00	— —	16.00	16.00	17.25
Fort Dodge, Iowa	21.00	24.00	26.00	23.00	37.50	51.00	14.00	16.00	16.00	16.00	17.25
Grand Rapids, Mich.	21.00	24.00	26.00	23.00	— —	51.00	14.00	16.00	16.00	16.00	17.25
Gypsum, Ohio	21.00	24.00	26.00	23.00	37.50	51.00	14.00	16.00	16.00	16.00	17.25
Heath, Montana	20.00	23.00	25.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
†Kansas City, Mo.	— —	— —	— —	— —	— —	56.78†	— —	— —	— —	— —	— —
†Laramie, Wyo.	24.55†	29.35†	— —	— —	— —	56.35†	19.35†	— —	— —	21.35†	— —
†Loveland, Colo.	24.55†	29.35†	— —	30.60†	— —	56.35†	19.35†	— —	— —	21.35†	— —
*Metro N. Y.—N. J. Whses.	20.80	24.10	26.50	23.50	— —	51.10	14.10	16.50	15.80	16.10	17.75
Miami, Fla.	— —	— —	— —	— —	— —	— —	17.50	— —	— —	— —	— —
Milwaukee, Wisc.	— —	— —	— —	— —	— —	— —	15.67	— —	— —	— —	— —
National City, Mich.	21.00	24.00	26.00	23.00	— —	51.00	14.00	16.00	16.00	16.00	17.25
*Oakfield, N. Y.	20.75	24.05	26.40	23.40	38.80	51.05	14.05	16.40	15.75	16.05	17.65
*Philadelphia, Pa.	20.80	24.10	26.50	23.50	— —	51.10	14.10	16.50	15.80	16.10	17.75
†Piedmont, S. D.	24.10†	28.75†	32.80†	— —	— —	— —	18.75†	— —	— —	— —	— —
Plastereo, Va.	21.00	24.00	26.00	23.00	— —	51.00	14.00	16.00	16.00	16.00	17.25
*Portsmouth, N. H.	21.47	25.97	27.80	24.80	— —	52.07	15.07	17.80	16.47	17.07	19.05
Southard, Okla.	21.00	24.00	26.00	23.00	37.50	51.00	14.00	16.00	16.00	16.00	17.25
Sweetwater, Texas	21.00	24.00	26.00	23.00	— —	51.00	14.00	16.00	16.00	16.00	17.25

* Minimum pickup 7500 sq. ft. patented gypsum board products. Note: any mixture of regular patented board products (including special surfaced gypsum board products).

9946 The above prices apply to the sale of all board embodying the claims of our patents in all markets except where an exception is made as follows:

(1) 32"x48" Gypsum Board—if grey surfaced and round edged, is subject to the minimum liner board price, to any destination. Square edge or cutstock gypsum board in size 32"x48" is subject to the minimum wallboard price, except where used for specific roof jobs only, size 32"x48" cutstock board is subject to the minimum liner board price for such specific jobs.

(2) 36"x48" Gypsum Board—36"x48" is standard liner board size in all states for use on specific gypsum roof jobs only, and is subject to minimum liner board price for such specific gypsum roof jobs.

(3) Sales to contractors and prefabricated house manufacturers, also extras on odd sizes:

(a) On sales of standard sizes to contractors, roofing contractors, metal ceiling contractors and prefabricated house manufacturers, add differentials per M sq. ft. as follows: (Note: Sales to roofing contractors are for specific roof jobs only):

To Contractors (Incl. Metal Ceiling Contrs.) and to Prefabricated House Mfrs. Std. Sizes		To Roofing Contractors Std. Sizes	
Wall Bd. & Sheathing	Lath & Liner	Wall Bd. & Sheathing	Lath & Liner
2.50	1.25	1.25	1.25

(b) On sales of odd sizes to dealers, contractors, roofing contractors, metal ceiling contractors and prefabricated house manufacturers, add differentials per M sq. ft. as follows: (Note: Sales to roofing contractors are for specific roof job only):

To Dealers Odd Sizes		To Contractors (Incl. Metal Ceiling Contrs.) & to Prefabricated House Mfrs. Odd Sizes		To Roofing Contractors Odd Sizes	
Wall Bd. & Sheathing	Lath & Liner	Wall Bd. & Sheathing	Lath & Liner	Wall Bd. & Sheathing	Lath & Liner
3.50	1.25	5.00	2.50	1.25	1.25

Yours very truly,

UNITED STATES GYPSUM COMPANY,

Vice President.

† Indicates changes in this reissue.

9947

UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

MARCH 15, 1938

Prices F.O.B. Trucks at Mills & Warehouses—Board License Bulletin No. 2 (Page 1)—Cancels Page 1 Dated March 10, 1938.

MR. C. NEWMAN,
Chicago Office.

DEAR SIR: Referring to our license contract with you, you are hereby notified that effective March 21, 1938, the minimum prices at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent), including Haggerty patent number 1,500,452 are as follows:

Dealer Prices f.o.b. Trucks, Mills or Whses. (Applying for Standard Sizes as listed in Bulletin No. 4)	1/4 Gypsum Wallboard (Wt. 1050# per M)	3/8" Gypsum Wallboard (Wt. 1475# per M)	1/2" Gypsum Wallboard (Wt. 2000# per M)	1/2" Gypsum Sheathing (Wt. 2000# per M)	3/4" Gypsum Wallboard (Wt. 3300# per M)	3/8" Tiled Gypsum Wallbd. (Wt. 1475# per M)	3/8" Gypsum Plaster Lath (Wt. 1475# per M)	1/2" Gypsum Plaster Lath (Wt. 2000# per M)	1/4" Gypsum Liner Board (Wt. 1050# per M)	3/8" Gypsum Liner Board (Wt. 1475# per M)	1/2" Gypsum Liner Board (Wt. 2000# per M)
Acme, Texas	21.00	24.00	26.00	23.00	— —	51.00	14.00	16.00	16.00	16.00	17.25
*Boston, Mass.	20.80	24.10	26.50	23.50	— —	51.10	14.10	16.50	15.80	16.10	17.75
Cleveland	— —	— —	— —	— —	— —	— —	16.00	— —	— —	— —	— —
Eldorado, Okla.	21.00	24.00	26.00	23.00	— —	51.00	14.00	— —	16.00	16.00	17.25
Fort Dodge, Iowa	21.00	24.00	26.00	23.00	37.50	51.00	14.00	16.00	16.00	16.00	17.25
Grand Rapids, Mich.	21.00	24.00	26.00	23.00	— —	51.00	14.00	16.00	16.00	16.00	17.25
Gypsum, Ohio	21.00	24.00	26.00	23.00	37.50	51.00	14.00	16.00	16.00	16.00	17.25
Heath, Montana	20.00	23.00	25.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
Kansas City, Mo.	— —	— —	— —	— —	— —	56.63	— —	— —	— —	— —	— —
Laramie, Wyo.	24.35	29.05	— —	— —	— —	56.05	19.05	— —	— —	21.05	— —
Loveland, Colo.	24.35	29.05	— —	— —	— —	56.05	19.05	— —	— —	21.05	— —
*Metro N. Y.-N. J. Whses.	20.80	24.10	26.50	23.50	— —	51.10	14.10	16.50	15.80	16.10	17.75
Miami, Fla.	— —	— —	— —	— —	— —	— —	17.50	— —	— —	— —	— —
Milwaukee, Wis.	— —	— —	— —	— —	— —	— —	15.67	— —	— —	— —	— —
National City, Mich.	21.00	24.00	26.00	23.00	— —	51.00	14.00	16.00	16.00	16.00	17.25
*Oakfield, N. Y.	20.75	24.05	26.40	23.40	38.80	51.05	14.05	16.40	15.75	16.05	17.65
*Philadelphia, Pa.	20.80	24.10	26.50	23.50	— —	51.10	14.10	16.50	15.80	16.10	17.75
Piedmont, S. D.	23.89	28.46	32.40	— —	— —	— —	18.46	— —	— —	— —	— —
Plasterco, Va.	21.00	24.00	26.00	23.00	— —	51.00	14.00	16.00	16.00	16.00	17.25
†*Portsmouth, N. H.	21.47†	25.07†	27.80†	24.80†	— —	52.07†	15.07†	17.80†	16.47†	17.07†	19.05†
Southard, Okla.	21.00	24.00	26.00	23.00	37.50	51.00	14.00	16.00	16.00	16.00	17.25
Sweetwater, Texas	21.00	24.00	26.00	23.00	— —	51.00	14.00	16.00	16.00	16.00	17.

†* Minimum pickup 7500 sq. ft. patented gypsum board products. Note: Any mixture of regular patented board products (including special surfaced gypsum board products).

9948 The above prices apply to all pickups of all board embodying the claims of our patents in all markets except where an exception is made as follows:

(1) 32" x 48" Gypsum Board—if grey surfaced and round edged, is subject to the minimum liner board price, to any destination. Square edge or cutstock gypsum board in size 32" x 48" is subject to the minimum wallboard price, except where used for specific roof jobs only, size 32" x 48" cutstock board is subject to the minimum liner board price for such specific jobs.

(2) 36" x 48" Gypsum Board—36" x 48" is standard liner board size in all states for use on specific gypsum roof jobs only, and is subject to minimum liner board price for such specific gypsum roof jobs.

(3) Sales to contractors and prefabricated house manufacturers, also extras on odd sizes:

(a) On sales of standard sizes to contractors, roofing contractors, metal ceiling contractors and prefabricated house manufacturers, add differentials per M sq. ft. as follows: (Note: Sales to roofing contractors are for specific roof jobs only):

To Contractors (Incl. Metal Ceiling Contrs.) And to Prefabricated House Mfrs. Std. Sizes		To Roofing Contractors Std. Sizes	
Wall Bd. & Sheathing	Lath & Liner	Wall Bd. & Sheathing	Lath & Liner
2.50	1.25	1.25	1.25

(b) On sales of odd sizes to dealers, contractors, roofing contractors, metal ceiling contractors and prefabricated house manufacturers, add differentials per M sq. ft. as follows: (Note: Sales to roofing contractors are for specific roof job only):

To Dealers Odd Sizes		To Contractors (Incl. Metal Ceiling Contrs.) & to Prefabricated House Mfrs. Odd Sizes		To Roofing Contractors Odd Sizes	
Wallbd. & Sheathing	Lath & Liner	Wallbd. & Sheathing	Lath & Liner	Wallbd. & Sheathing	Lath & Liner
2.50	1.25	5.00	2.50	1.25	1.25

Yours very truly,

UNITED STATES GYPSUM COMPANY

Vice President.

† Indicates changes in this reisaue.

9949 UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

MARCH 10, 1938

Prices F.O.B. Trucks at Mills & Warehouses — Board Licçense Bulletin No. 2 (Page 1)—Cancels Page 1 Dated February 11, 1938.

MR. C. NEWMAN
Chicago Office

DEAR SIR: Referring to our license contract with you, you are hereby notified that effective March 21, 1938, the minimum prices at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent), including Haggerty patent number 1,500,452 are as follows:

Dealer Prices f.o.b. Trucks, Mills or Whses. (Applying for Standard Sizes as listed in Bulletin No. 4)	1/4" Gypsum Wallboard (Wt. 1050 # per M)	3/8" Gypsum Wallboard (Wt. 1475 # per M)	1/2" Gypsum Wallboard (Wt. 2000 # per M)	1/2" Gypsum Sheathing (Wt. 2000 # per M)	3/4" Gypsum Wallboard (Wt. 3300 # per M)	3/8" Tiled Gypsum Wallbd. (Wt. 1475 # per M)	3/8" Gypsum Plaster Lath (Wt. 1475 # per M)	1/2" Gypsum Plaster Lath (Wt. 2000 # per M)	1/4" Gypsum Liner Board (Wt. 1050 # per M)	3/8" Gypsum Liner Board (Wt. 1475 # per M)	1/2" Gypsum Liner Board (Wt. 2000 # per M)
Acme, Texas	21.00	24.00	26.00	23.00	— —	51.00	14.00	16.00	16.00	16.00	17.25
*Boston & Portsmouth	20.80	24.10	26.50	23.50	— —	51.10	14.10	16.50	15.80	16.10	17.75
Cleveland	— —	— —	— —	— —	— —	— —	16.00	— —	— —	— —	— —
Eldorado, Okla.	21.00	24.00	26.00	23.00	— —	51.00	14.00	— —	16.00	16.00	17.25
Fort Dodge, Iowa	21.00	24.00	26.00	23.00	37.50	51.00	14.00	16.00	16.00	16.00	17.25
Grand Rapids, Mich.	21.00	24.00	26.00	23.00	— —	51.00	14.00	16.00	16.00	16.00	17.25
Gypsum, Ohio	21.00	24.00	26.00	23.00	37.50	51.00	14.00	16.00	16.00	16.00	17.25
Heath, Montana	20.00	23.00	25.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
Kansas City, Mo.	— —	— —	— —	— —	— —	56.63	— —	— —	— —	— —	— —
Laramie, Wyo.	24.35	29.05	— —	— —	— —	56.05	19.05	— —	— —	21.05	— —
Loveland, Colo.	24.35	29.05	— —	— —	— —	56.05	19.05	— —	— —	21.05	— —
*Metro N. Y.-N. J. Whses.	20.80	24.10	26.50	23.50	— —	51.10	14.10	16.50	15.80	16.10	17.75
†Miami, Fla.	— —	— —	— —	— —	— —	— —	17.50†	— —	— —	— —	— —
Milwaukee, Wis.	— —	— —	— —	— —	— —	— —	15.67	— —	— —	— —	— —
National City, Mich.	21.00	24.00	26.00	23.00	— —	51.00	14.00	16.00	16.00	16.00	17.25
*Oakfield, N. Y.	20.75	24.05	26.40	23.40	38.80	51.05	14.05	16.40	15.75	16.05	17.65
*Philadelphia, Pa.	20.80	24.10	26.50	23.50	— —	51.10	14.10	16.50	15.80	16.10	17.75
Piedmont, S. D.	23.89	28.46	32.40	— —	— —	— —	18.46	— —	— —	— —	— —
Plastereo, Va.	21.00	24.00	26.00	23.00	— —	51.00	14.00	16.00	16.00	16.00	17.25
Southard, Okla.	21.00	24.00	26.00	23.00	37.50	51.00	14.00	16.00	16.00	16.00	17.25
Sweetwater, Texas	21.00	24.00	26.00	23.00	— —	51.00	14.00	16.00	16.00	16.00	17.25

* Minimum pickup 7500 sq. ft. patented gypsum board products. Note: Any mixture of regular patented board products (including special surfaced gypsum board products).

9950 The above prices apply to all pickups of all board embodying the claims of our patents in all markets except where an exception is made as follows:

(1) 32" x 48" Gypsum Board—if grey surfaced and round edged, is subject to the minimum liner board price, to any destination. Square edge or cutstock gypsum board in size 32" x 48" is subject to the minimum wallboard price, except where used for specific roof jobs only, size 32" x 48" cutstock board is subject to the minimum liner board price for such specific jobs.

(2) 36" x 48" Gypsum Board—36" x 48" is standard liner board size in all states for use on specific gypsum roof jobs only, and is subject to minimum liner board price for such specific gypsum roof jobs.

(3) Sales to contractors and prefabricated house manufacturers, also extras on odd sizes:

(a) On sales of standard sizes to contractors, roofing contractors, metal ceiling contractors and prefabricated house manufacturers, add differentials per M sq. ft. as follows: (Note: Sales to roofing contractors are for specific roof jobs only):

To Contractors (Incl. Metal Ceiling Contrs.) And to Prefabricated House Mfrs. Std. Sizes		To Roofing Contractors Std. Sizes	
Wall Bd. & Sheathing	Lath & Liner	Wall Bd. & Sheathing	Lath & Liner
2.50	1.25	1.25	1.25

(b) On sales of odd sizes to dealers, contractors, roofing contractors, metal ceiling contractors and prefabricated house manufacturers, add differentials per M sq. ft. as follows: (Note: Sales to roofing contractors are for specific roof job only):

To Dealers Odd Sizes		To Contractors (Incl. Metal Ceiling Contrs.) & to Prefabricated House Mfrs. Odd Sizes		To Roofing Contractors Odd Sizes	
Wallbd & Sheathing	Lath & Liner	Wallbd. & Sheathing	Lath & Liner	Wallbd. & Sheathing	Lath & Liner
2.50	1.25	5.00	2.50	1.25	1.25

Yours very truly,

UNITED STATES GYPSUM COMPANY

Vice President.

† Indicates changes in this reissue.

9951 UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

FEBRUARY 11, 1938

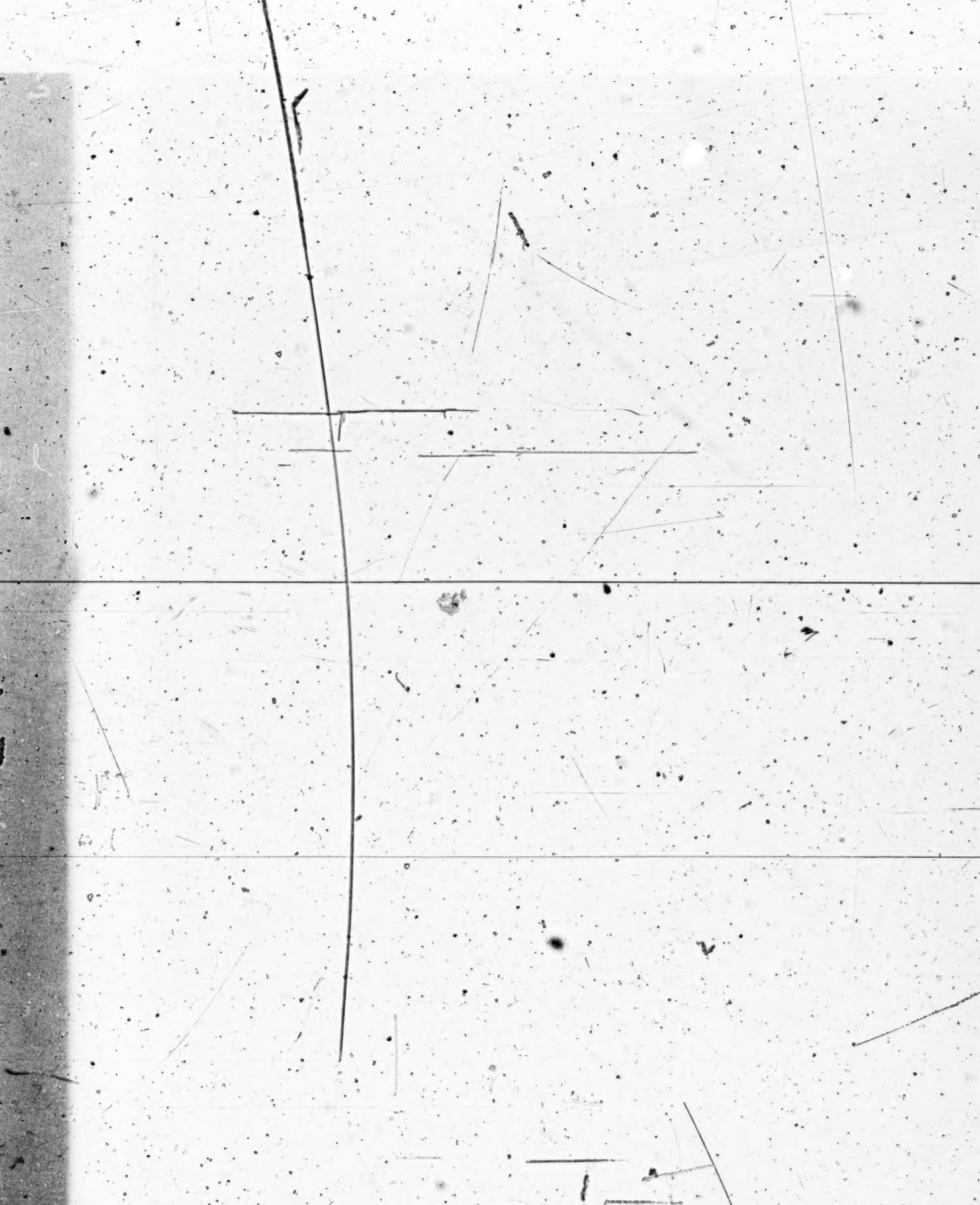
Prices F.O.B. Trucks at Mills & Warehouses—Board License Bulletin No. 2 (Page 1)—Cancels Page 1 Dated January 4, 1938

DEAR SIR: Referring to our license contract with you, you are hereby notified that effective February 15, 1938, the minimum prices at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent), including Haggerty patent number 1,500,452 are as follows:

Dealer Prices f.o.b. Trucks, Mills or Whses. (Applying for Standard Sizes as listed in Bulletin No. 4)	1/4" Gypsum Wallboard (Wt. 1050 # per M)	3/8" Gypsum Wallboard (Wt. 1475# per M)	1/2" Gypsum Wallboard (Wt. 2000 # per M)	1/2" Gypsum Sheathing (Wt. 2000 # per M)	3/4" Gypsum Wallboard (Wt. 3300 # per M)	3/8" Tiled Gypsum Wallbd. (Wt. 1475# per M)	3/8" Gypsum Plaster Lath (Wt. 1475# per M)	1/2" Gypsum Plaster Lath (Wt. 2000 # per M)	1/4" Gypsum Liner Board (Wt. 1050 # per M)	3/8" Gypsum Liner Board (Wt. 1475 # per M)	1/2" Gypsum Liner Board (Wt. 2000 # per M)
Acme, Texas	21.00	24.00	26.00	23.00	— —	51.00	14.00	16.00	16.00	16.00	17.25
*Boston & Portsmouth	20.80	24.10	26.50	23.50	— —	51.10	14.10	16.50	15.80	16.10	17.75
Cleveland	— —	— —	— —	— —	— —	— —	16.00	— —	— —	— —	— —
Eldorado, Okla.	21.00	24.00	26.00	23.00	— —	51.00	14.00	— —	16.00	16.00	17.25
Fort Dodge, Iowa	21.00	24.00	26.00	23.00	37.50	51.00	14.00	16.00	16.00	16.00	17.25
Grand Rapids, Mich.	21.00	24.00	26.00	23.00	— —	51.00	14.00	16.00	16.00	16.00	17.25
Gypsum, Ohio	21.00	24.00	26.00	23.00	37.50	51.00	14.00	16.00	16.00	16.00	17.25
†Heath, Montana	20.00†	23.00	25.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
†Kansas City, Mo.	— —	— —	— —	— —	— —	56.63†	— —	— —	— —	— —	— —
Laramie, Wyo.	24.35	29.05	— —	— —	— —	56.05	19.05	— —	— —	21.05	— —
Loveland, Colo.	24.35	29.05	— —	— —	— —	56.05	19.05	— —	— —	21.05	— —
*Metro N. Y.—N. J. Whses.	20.80	24.10	26.50	23.50	— —	51.10	14.10	16.50	15.80	16.10	17.75
Miami, Fla.	— —	— —	— —	— —	— —	— —	17.00	— —	— —	— —	— —
Milwaukee, Wis.	— —	— —	— —	— —	— —	— —	15.67	— —	— —	— —	— —
National City, Mich.	21.00	24.00	26.00	23.00	— —	51.00	14.00	16.00	16.00	16.00	17.25
*Oakfield, N. Y.	20.75	24.05	26.40	23.40	38.80	51.05	14.05	16.40	15.75	16.05	17.65
*Philadelphia, Pa.	20.80	24.10	26.50	23.50	— —	51.10	14.10	16.50	15.80	16.10	17.75
†Piedmont, S. D.	23.89†	28.46†	32.40†	— —	— —	— —	18.46†	— —	— —	— —	— —
Plastereo, Va.	21.00	24.00	26.00	23.00	— —	51.00	14.00	16.00	16.00	16.00	17.25
Southard, Okla.	21.00	24.00	26.00	23.00	37.50	51.00	14.00	16.00	16.00	16.00	17.25
Sweetwater, Texas	21.00	24.00	26.00	23.00	— —	51.00	14.00	16.00	16.00	16.00	17.25

* Minimum pickup 7500 sq. ft. patented gypsum board products. Note: Any mixture of regular patented board products (including special surfaced gypsum board products).

† Indicates change in this reissue (effective February 15, 1938).



9952 UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

JANUARY 4, 1938.

Prices F.O.B. Trucks at Mills & Warehouses—Board License Bulletin No. 2 (Page 1)—Cancels Page 1 Dated December 31, 1937.

DEAR SIR: Referring to our license contract with you, you are hereby notified that effective January 15, 1938, the minimum prices at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent), including Haggerty patent number 1,500,452 are as follows:

Dealer Prices f.o.b. Trucks, Mills or Whses. (Applying for Standard Sizes as listed in Bulletin No. 4)	1/4" Gypsum Wallboard (Wt. 1050 # per M)	3/8" Gypsum Wallboard (Wt. 1475 # per M)	1/2" Gypsum Wallboard (Wt. 2000 # per M)	1/2" Gypsum Sheething (Wt. 2000 # per M)	3/4" Gypsum Wallboard (Wt. 3300 # per M)	3/8" Tiled Gypsum Wallbd. (Wt. 1475 # per M)	3/8" Gypsum Plaster Lath (Wt. 1475 # per M)	1/2" Gypsum Plaster Lath (Wt. 2000 # per M)	1/4" Gypsum Liner Board (Wt. 1050 # per M)*	3/8" Gypsum Liner Board (Wt. 1475 # per M)	1/2" Gypsum Liner Board (Wt. 2000 # per M)
Acme, Texas	21.00	24.00	26.00	23.00	— —	51.00	14.00	16.00	16.00	16.00	17.25
*Boston & Portsmouth	20.80	24.10	26.50	23.50	— —	51.10	14.10	16.50	15.80	16.10	17.75
Cleveland	— —	— —	— —	— —	— —	— —	16.00	— —	— —	— —	— —
Eldorado, Okla.	21.00	24.00	26.00	23.00	— —	51.00	14.00	— —	16.00	16.00	17.25
Fort Dodge, Iowa	21.00	24.00	26.00	23.00	37.50	51.00	14.00	16.00	16.00	16.00	17.25
Grand Rapids, Mich.	21.00	24.00	26.00	23.00	— —	51.00	14.00	16.00	16.00	16.00	17.25
Gypsum, Ohio	21.00	24.00	26.00	23.00	37.50	51.00	14.00	16.00	16.00	16.00	17.25
Heath, Montana	22.50	23.00	25.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
Laramie, Wyo.	24.35	29.05	— —	— —	— —	56.05	19.05	— —	— —	21.05	— —
Loveland, Colo.	24.35	29.05	— —	— —	— —	56.05	19.05	— —	— —	21.05	— —
*Metro N. Y.—N. J. Whses.	20.80	24.10	26.50	23.50	— —	51.10	14.10	16.50	15.80	16.10	17.75
Miami, Fla.	— —	— —	— —	— —	— —	— —	17.00	— —	— —	— —	— —
Milwaukee, Wis.	— —	— —	— —	— —	— —	— —	15.67	— —	— —	— —	— —
National City	21.00	24.00	26.00	23.00	— —	51.00	14.00	16.00	16.00	16.00	17.25
*Oakfield, N. Y.	20.75	24.05	26.40	23.40	38.80	51.05	14.05	16.40	15.75	16.05	17.65
*Philadelphia, Pa.	20.80	24.10	26.50	23.50	— —	51.10	14.10	16.50	15.80	16.10	17.7
†Plasterco, Va.	21.00	24.00	26.00	23.00	— —	51.00	14.00	16.00	16.00	16.00	17.25
Southard, Okla.	21.00	24.00	26.00	23.00	37.50	51.00	14.00	16.00	16.00	16.00	17.25
Sweetwater, Texas	21.00	24.00	26.00	23.00	— —	51.00	14.00	16.00	16.00	16.00	17.25

* Minimum pickup 7500 sq. ft. patented gypsum board products. Note: Any mixture of regular patented board products (including special surfaced gypsum board products).

† Indicates change in this reissue, to become effective January 15, 1938.

9953 UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

DECEMBER 31, 1937.

Prices F.O.B. Trucks at Mills & Warehouses—Board License Bulletin No. 2 (Page 1)—Cancels Page 1 Dated December 17, 1937.

DEAR SIR: Referring to our license contract with you, you are hereby notified that effective January 10, 1938, the minimum prices at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent), including Haggerty patent number 1,500,452 are as follows:

Dealer Prices f.o.b. Trucks, Mills or Whses. (Applying for Standard Sizes as listed in Bulletin No. 4)	1/4" Gypsum Wallboard (Wt. 1050# per M)	3/8" Gypsum Wallboard (Wt. 1475# per M)	1/2" Gypsum Wallboard (Wt. 2000# per M)	1/2" Gypsum Sheathing (Wt. 2000# per M)	3/4" Gypsum Wallboard (Wt. 3300# per M)	3/8" Tiled Gypsum Wallbd. (Wt. 1475# per M)	3/8" Gypsum Plaster Lath (Wt. 1475# per M)	1/2" Gypsum Plaster Lath (Wt. 2000# per M)	1/4" Gypsum Liner Board (Wt. 1050# per M)	3/8" Gypsum Liner Board (Wt. 1475# per M)	1/2" Gypsum Liner Board (Wt. 2000# per M)
Acme, Texas	21.00	24.00	26.00	23.00	— —	51.00	14.00	16.00	16.00	16.00	17.25
*Boston & Portsmouth	20.80	24.10	26.50	23.50	— —	51.10	14.10	16.50	15.80	16.10	17.75
Cleveland	— —	— —	— —	— —	— —	— —	16.00	— —	— —	— —	— —
Eldorado, Okla.	21.00	24.00	26.00	23.00	— —	51.00	14.00	— —	16.00	16.00	17.25
Fort Dodge, Iowa	21.00	24.00	26.00	23.00	37.50	51.00	14.00	16.00	16.00	16.00	17.25
Grand Rapids, Mich.	21.00	24.00	26.00	23.00	— —	51.00	14.00	16.00	16.00	16.00	17.25
Gypsum, Ohio	21.00	24.00	26.00	23.00	37.50	51.00	14.00	16.00	16.00	16.00	17.25
Heath, Montana	22.50	23.00	25.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
Laramie, Wyo.	24.35	29.05	— —	— —	— —	56.05	19.05	— —	— —	21.05	— —
Loveland, Colo.	24.35	29.05	— —	— —	— —	56.05	19.05	— —	— —	21.05	— —
*Metro. N. Y.—N. J. Whses.	20.80	24.10	26.50	23.50	— —	51.10	14.10	16.50	15.80	16.10	17.75
†Miami, Fla.	— —	— —	— —	— —	— —	— —	17.00†	— —	— —	— —	— —
Milwaukee, Wis.	— —	— —	— —	— —	— —	— —	15.67	— —	— —	— —	— —
National City, Mich.	21.00	24.00	26.00	23.00	— —	51.00	14.00	16.00	16.00	16.00	17.25
*Oakfield, N. Y.	20.75	24.05	26.40	23.40	38.80	51.05	14.05	16.40	15.75	16.05	17.65
*Philadelphia, Pa.	20.80	24.10	26.50	23.50	— —	51.10	14.10	16.50	15.80	16.10	17.75
*Plasterco, Va.	20.00	23.00	25.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
Southard, Okla.	21.00	24.00	26.00	23.00	37.50	51.00	14.00	16.00	16.00	16.00	17.25
Sweetwater, Texas	21.00	24.00	26.00	23.00	— —	51.00	14.00	16.00	16.00	16.00	17.25

* Minimum pickup 7500 sq. ft. patented gypsum board products. Note: Any mixture of regular patented board products (including special surfaced gypsum board products).



9954 UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

DECEMBER 17, 1937

Prices F.O.B. Trucks at Mills & Warehouses—Board License Bulletin No. 2 (Page 1)—Cancels Page 1 Dated October 21, 1937.

MR. C. NEWMAN,
Chicago.

DEAR SIR: Referring to our license contract with you, you are hereby notified that effective December 20, 1937 the minimum prices at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent), including Haggerty patent number 1,500,452 are as follows:

Dealer Prices f.o.b. Trucks, Mills or Whses. (Applying for Standard Sizes as listed in Bulletin No. 4)	1/4" Gypsum Wallboard (Wt. 1050# per M)	3/8" Gypsum Wallboard (Wt. 1475# per M)	1/2" Gypsum Wallboard (Wt. 2000# per M)	1/2" Gypsum Sheathing (Wt. 2000# per M)	3/4" Gypsum Wallboard (Wt. 3300# per M)	3/8" Tiled Gypsum Wallbd. (Wt. 1475# per M)	3/8" Gypsum Plaster Lath (Wt. 1475# per M)	1/2" Gypsum Plaster Lath (Wt. 2000# per M)	1/4" Gypsum Liner Board (Wt. 1050# per M)	3/8" Gypsum Liner Board (Wt. 1475# per M)	1/2" Gypsum Liner Board (Wt. 2000# per M)
Acme, Texas	21.00	24.00	26.00	23.00	— —	51.00	14.00	16.00	16.00	16.00	17.25
*Boston & Portsmouth	20.80	24.10	26.50	23.50	— —	51.10	14.10	16.50	15.80	16.10	17.75
Cleveland	— —	— —	— —	— —	— —	— —	16.00	— —	— —	— —	— —
Eldorado, Okla.	21.00	24.00	26.00	23.00	— —	51.00	14.00	— —	16.00	16.00	17.25
Fort Dodge, Iowa	21.00	24.00	26.00	23.00	37.50	51.00	14.00	16.00	16.00	16.00	17.25
Grand Rapids, Mich.	21.00	24.00	26.00	23.00	— —	51.00	14.00	16.00	16.00	16.00	17.25
Gypsum, Ohio	21.00	24.00	26.00	23.00	37.50	51.00	14.00	16.00	16.00	16.00	17.25
Heath, Montana	22.50	23.00	25.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
†Laramie, Wyo.	24.35†	29.05†	— —	— —	— —	56.05†	19.05†	— —	— —	21.05†	— —
†Loveland, Colo.	24.35†	29.05†	— —	— —	— —	56.05†	19.05†	— —	— —	21.05†	— —
*Metro N. Y.—N. J. Whses.	20.80	24.10	26.50	23.50	— —	51.10	14.10	16.50	15.80	16.10	17.75
Miami, Fla.	— —	— —	— —	— —	— —	— —	16.00	— —	— —	— —	— —
†Milwaukee, Wis.	— —	— —	— —	— —	— —	— —	15.67†	— —	— —	— —	— —
National City, Mich.	21.00	24.00	26.00	23.00	— —	51.00	14.00	16.00	16.00	16.00	17.25
*Oakfield, N. Y.	20.75	24.05	26.40	23.40	38.80	51.05	14.05	16.40	15.75	16.05	17.65
*Philadelphia, Pa.	20.80	24.10	26.50	23.50	— —	51.10	14.10	16.50	15.80	16.10	17.75
Plasterco, Va.	20.00	23.00	25.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
Southard, Okla.	21.00	24.00	26.00	23.00	37.50	51.00	14.00	16.00	16.00	16.00	17.25
Sweetwater, Texas	21.00	24.00	26.00	23.00	— —	51.00	14.00	16.00	16.00	16.00	17.25

* Minimum pickup 7500 sq. ft. patented gypsum board products. Note: Any mixture of regular patented board products (including special surfaced gypsum board products)

9955 The above prices apply to all pickups of all board embodying the claims of our patents in all markets except where an exception is made as follows:

(1) 32" x 48" Gypsum Board—if grey surfaced and round edged, is subject to the minimum liner board price, to any destination. Square edge or cutstock gypsum board in size 32" x 48" is subject to the minimum wallboard price, except where used for specific roof jobs only, size 32" x 48" cutstock board is subject to the minimum liner board price for such specific jobs.

(2) 36" x 48" Gypsum Board—36" x 48" is standard liner board size in all states for use on specific gypsum roof jobs only, and is subject to minimum liner board price for such specific gypsum roof jobs.

(3) Sales to contractors and prefabricated house manufacturers, also extras on odd sizes:

(a) On sales of standard sizes to contractors, roofing contractors, metal ceiling contractors and prefabricated house manufacturers, add differentials per M sq. ft. as follows: (Note: Sales to roofing contractors are for specific roof jobs only):

To Contractors (Incl. Metal Ceiling Contrs.) and to Prefabricated House Mfrs. Std. Sizes		To Roofing Contractors Std. Sizes	
Wall Bd. & Sheathing	Lath & Liner	Wall Bd. & Sheathing	Lath & Liner
2.50	1.25	1.25	1.25

(b) On sales of odd sizes to dealers, contractors, roofing contractors, metal ceiling contractors and prefabricated house manufacturers, add differentials per M sq. ft. as follows: (Note: Sales to roofing contractors are for specific roof job only):

To Dealers Odd Sizes		To Contractors (Incl. Metal Ceiling Contrs.) & to Prefabricated House Mfrs. Odd Sizes		To Roofing Contractors Odd Sizes	
Wall Bd. & Sheathing	Lath & Liner	Wall Bd. & Sheathing	Lath & Liner	Wall Bd. & Sheathing	Lath & Liner
2.50	1.25	5.00	2.50	1.25	1.25

Yours very truly,

UNITED STATES GYPSUM COMPANY

Vice President.

† Indicates changes in this reissue.

4906

9956 UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

OCTOBER 21, 1937

Prices F.O.B. Trucks at Mills & Warehouses—Board License Bulletin No. 2 (Page 1)—Cancels Page 1 Dated October 5, 1937.

MR. C. NEWMAN
Chicago Office

DEAR SIR: Referring to our license contract with you, you are hereby notified that effective November 1, 1937 the minimum prices at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent), including Haggerty patent number 1,500,452 are as follows:

Dealer Prices f.o.b. Trucks, Mills or Whses. (Applying for standard sizes as listed in Bulletin No. 4)	1/4" Gypsum Wallboard (Wt. 1050 # per M) †	3/8" Gypsum Wallboard (Wt. 1475 # per M) †	1/2" Gypsum Wallboard (Wt. 2000 # per M) †	1/2" Gypsum Sheathing (Wt. 2000 # per M) †	3/4" Gypsum Wallboard (Wt. 3300 # per M)	3/8" Tiled Gypsum Wallbd. (Wt. 1475 # Per M) †	3/8" Gypsum Plaster Lath (Wt. 1475 # Per M) †	1/2" Gypsum Plaster Lath (Wt. 2000 # per M) †	1/4" Gypsum Liner Board (Wt. 1050 # per M) †	3/8" Gypsum Liner Board (Wt. 1475 # Per M) †	1/2" Gypsum Liner Board (Wt. 2000 # per M) †
Acme, Texas	21.00	24.00	26.00	23.00	— —	51.00	14.00	16.00	16.00	16.00	17.25
†*Boston & Portsmouth	20.80	24.10	26.50	23.50	— —	51.10	14.10	16.50	15.80	16.10	17.75
Cleveland	— —	— —	— —	— —	— —	— —	16.00	— —	— —	— —	— —
Eldorado, Okla.	21.00	24.00	26.00	23.00	— —	51.00	14.00*	— —	16.00	16.00	17.25
Fort Dodge, Iowa	21.00	24.00	26.00	23.00	37.50	51.00	14.00	16.00	16.00	16.00	17.25
Grand Rapids, Mich.	21.00	24.00	26.00	23.00	— —	51.00	14.00	16.00	16.00	16.00	17.25
Gypsum, Ohio	21.00	24.00	26.00	23.00	37.50	51.00	14.00	16.00	16.00	16.00	17.25
Heath, Montana	22.50	23.00	25.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
†Laramie, Wyo.	24.10	28.75	— —	— —	— —	55.75	18.75	— —	— —	20.75	— —
†Loveland, Colo.	24.10	28.75	— —	— —	— —	55.75	18.75	— —	— —	20.75	— —
†*Metro N. Y.-N. J. Whses.	20.80	24.10	26.50	23.50	— —	51.10	14.10	16.50	15.80	16.10	17.75
Miami, Fla.	— —	— —	— —	— —	— —	— —	16.00	— —	— —	— —	— —
†Milwaukee, Wis.	— —	— —	— —	— —	— —	— —	15.52	— —	— —	— —	— —
National City, Mich.	21.00	24.00	26.00	23.00	— —	51.00	14.00	16.00	16.00	16.00	17.25
†*Oakfield, N. Y.	20.75	24.05	26.40	23.40	38.80	51.05	14.05	16.40	15.75	16.05	17.65
†*Philadelphia, Pa.	20.80	24.10	26.50	23.50	— —	51.10	14.10	16.50	15.80	16.10	17.75
Plasterco, Va.	20.00	23.00	25.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
Southard, Okla.	21.00	24.00	26.00	23.00	37.50	51.00	14.00	16.00	16.00	16.00	17.25
Sweetwater, Tex.	21.00	24.00	26.00	23.00	— —	51.00	14.00	16.00	16.00	16.00	17.25

* Minimum pickup 7500 sq. ft. patented gypsum board products. Note: Any mixture of regular patented board products (including special surfaced gypsum board products).

9957 The above prices apply to all pickups of all board embodying the claims of our patents in all markets except where an exception is made as follows:

(1) 32" x 48" Gypsum Board—if grey surfaced and round edged, is subject to the minimum liner board price, to any destination. Square edge or cutstock gypsum board in size 32" x 48" is subject to the minimum wallboard price, except where used for specific roof jobs only, size 32" x 48" cutstock board is subject to the minimum liner board price for such specific jobs.

(2) 36" x 48" Gypsum Board—36" x 48" is standard liner board size in all states for use on specific gypsum roof jobs only, and is subject to minimum liner board price for such specific gypsum roof jobs.

(3) Sales to contractors and prefabricated house manufacturers, also extras on odd sizes:

(a) On sales of standard sizes to contractors, roofing contractors, metal ceiling contractors and prefabricated house manufacturers, add differentials per M sq. ft. as follows: (Note: Sales to roofing contractors are for specific roof jobs only):

To Contractors (Incl. Metal Ceiling Contrs.) and to Prefabricated House Mfrs. Std. Sizes		To Roofing Contractors Std. Sizes	
Wall Bd. & Sheathing	Lath & Liner	Wall Bd. & Sheathing	Lath & Liner
2.50	1.25	1.25	1.25

(b) On sales of odd sizes to dealers, contractors, roofing contractors, metal ceiling contractors and prefabricated house manufacturers, add differentials per M sq. ft. as follows: (Note: Sales to roofing contractors are for specific roof job only):

To Dealers Odd Sizes		To Contractors (Incl. Metal Ceiling Contrs.) & to Prefabricated House Mfrs. Odd Sizes		To Roofing Contractors Odd Sizes	
Wall Bd. & Sheathing	Lath & Liner	Wall Bd. & Sheathing	Lath & Liner	Wall Bd. & Sheathing	Lath & Liner
2.50	1.25	5.00	2.50	1.25	1.25

† Indicates change in this reissue.

Yours very truly,

UNITED STATES GYPSUM COMPANY

Vice President.

† Indicates changes in this reissue.

9958 UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

OCTOBER 5, 1937.

MR. C. NEWMAN

Prices F.O.B. Trucks at Mills & Warehouses—Board License Bulletin No. 2 (Page 1)—Cancels Page 1 Dated July 13, 1937.

DEAR SIRS: Referring to or license contract with you, you are hereby notified that effective immediately the minimum prices at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent), including Haggerty patent number 1,500,452 are as follows:

Dealer Prices f.o.b. Trucks, Mills or Whses. (Applying for standard sizes as listed in Bulletin No. 4)	1/4" Gypsum Wallboard (Wt. 950 # per M) †	3/8" Gypsum Wallboard (Wt. 1400 # per M) †	1/2" Gypsum Wallboard (Wt. 1900 # per M) †	1/2" Gypsum Wallboard (Wt. 1900 # per M) †	3/4" Gypsum Wallboard (Wt. 3300 # per M) †	3/8" Tiled Gypsum Wallbd. (Wt. 1400 # per M) †	3/8" Gypsum Plaster Lath (Wt. 1400 # per M †	1/2" Gypsum Plaster Lath (Wt. 1900 # per M) †	1/4" Gypsum Liner Board Wt. 950 # per M) †	3/8" Gypsum Liner Board (Wt. 1400 # per M) †	1/2" Gypsum Liner Board (Wt. 1900 # per M) †
Acme, Texas	21.00	24.00	26.00	23.00	— —	51.00	14.00	16.00	16.00	16.00	17.25
*Boston & Portsmouth	20.70	24.00	26.45	23.45	— —	51.00	14.00	16.45	15.70	16.00	17.70
Cleveland	— —	— —	— —	— —	— —	— —	16.00	— —	— —	— —	— —
Eldorado, Okla.	21.00	24.00	26.00	23.00	— —	51.00	14.00	— —	16.00	16.00	17.25
†Fort Dodge, Iowa	21.00	24.00	26.00	23.00	37.50	51.00	14.00	16.00	16:00	16.00	17.25
Grand Rapids, Mich.	21.00	24.00	26.00	23.00	— —	51.00	14.00	16.00	16.00	16.00	17.25
Gypsum, Ohio	21.00	24.00	26.00	23.00	37.50	51.00	14.00	16.00	16.00	16.00	17.25
Heath; Montana	22.50	23.00	25.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
Laramie, Wyo.	24.00	28.75	— —	— —	— —	55.75	18.75	— —	— —	20.75	— —
Loveland, Colo.	23.75	28.50	— —	— —	— —	55.50	18.50	— —	— —	20.50	— —
*Metro N. Y.—N. J. Whses.	20.70	24.00	26.45	23.45	— —	51.00	14.00	16.45	15.70	16.00	17.70
Miami, Fla.	— —	— —	— —	— —	— —	— —	16.00	— —	— —	— —	— —
Milwaukee, Wis.	— —	— —	— —	— —	— —	— —	15.43	— —	— —	— —	— —
National City, Mich.	21.00	24.00	26.00	23.00	— —	51.00	14.00	16.00	16.00	16.00	17.25
*Oakfield, N. Y.	20.70	24.00	26.35	23.35	38.80	51.00	14.00	16.35	15.70	16.00	17.[illegible]
*Philadelphia, Pa.	20.70	24.00	26.45	23.45	— —	51.00	14.00	16.45	15.70	16.00	17.70
Plastereo, Va.	20.00	23.00	25.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
Southard, Okla.	21.00	24.00	26.00	23.00	37.50	51.00	14.00	16.00	16.00	16.00	17.25
Sweetwater, Tex.	21.00	24.00	26.00	23.00	— —	51.00	14.00	16.00	16.00	16.00	17.25

* Minimum pickup 7500 sq. ft. patented gypsum board products. Note: Any mixture of regular patented board products (including special surfaced gypsum board products).



9959 The above prices apply to all pickups of all board embodying the claims of our patents in all markets except where an exception is made as follows:

(1) 32" x 48" Gypsum Board—if grey surfaced and round edged, is subject to the minimum liner board price, to any destination. Square edge or cutstock gypsum board in size 32" x 48" is subject to the minimum wallboard price, except where used for specific roof jobs only, size 32" x 48" cutstock board is subject to the minimum liner board price for such specific jobs.

(2) 36" x 48" Gypsum Board—36" x 48" is standard liner board size in all states for use on specific gypsum roof jobs only, and is subject to minimum liner board price for such specific gypsum roof jobs.

(3) Sales to contractors and prefabricated house manufacturers, also extras on odd sizes:

(a) On sales of standard sizes to contractors, roofing contractors, metal ceiling contractors and prefabricated house manufacturers, add differentials per M sq. ft. as follows: (Note: Sales to roofing contractors are for specific roof jobs only):

To Contractors (Incl. Metal Ceiling Contrs.) and to Prefabricated House Mfrs. Std. Sizes		To Roofing Contractors Std. Sizes	
Wall Bd. & Sheathing	Lath & Liner	Wall Bd. & Sheathing	Lath & Liner
2.50	1.25	1.25	1.25

(b) On sales of odd sizes to dealers, contractors, roofing contractors, metal ceiling contractors and prefabricated house manufacturers, add differentials per M sq. ft. as follows: (Note: Sales to roofing contractors are for specific roof job only):

To Dealers Odd Sizes		To Contractors (Incl. Metal Ceiling Contrs.) & to Prefabricated House Mfrs. Odd Sizes		To Roofing Contractors Odd Sizes	
Wall Bd. & Sheathing	Lath & Liner	Wall Bd. & Sheathing	Lath & Liner	Wall Bd. & Sheathing	Lath & Liner
2.50	1.25	5.00	2.50	1.25	1.25

Yours very truly,

UNITED STATES GYPSUM COMPANY

Vice President.

† Indicates changes in this reissue.

4912

9960 UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

JULY 13, 1937.

Prices F.O.B. Trucks at Mills & Warehouses—Board License Bulletin No. 2 (Page 1)—Cancels Page 1 Dated June 12, 1937.

MR. C. NEWMAN,
General Sales,
Office.

DEAR SIRS: Referring to our license contract with you, you are hereby notified that effective July 16, 1937 the minimum prices at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent), including Haggerty patent number 1,500,452 are as follows:

Dealer Prices f.o.b. Trucks, Mills or Whses. (Applying for standard sizes as listed in Bulletin No. 4)	1/4" Gypsum Wallboard (Wt. 950 # per M)	3/8" Gypsum Wallboard (Wt. 1400 # per M)	1/2" Gypsum Wallboard (Wt. 1900 # per M)	1/2" Gypsum Sheathing (Wt. 1900 # per M) †	3/4" Gypsum Wallboard (Wt. 3300 # per M)	3/8" Tiled Gypsum Wallbd. (Wt. 1400 # per M)	3/8" Gypsum Plaster Lath (Wt. 1400 # per M)	1/2" Gypsum Plaster Lath (Wt. 1900 # per M)	1/4" Gypsum Liner Board (Wt. 950 # per M)	3/8" Gypsum Liner Board (Wt. 1400 # per M)	1/2" Gypsum Liner Board (Wt. 1900 # per M)
Acme, Texas	21.00	24.00	26.00	23.00	— —	51.00	14.00	16.00	16.00	16.00	17.25
*Boston & Portsmouth	20.70	24.00	26.45	23.45	— —	51.00	14.00	16.45	15.70	16.00	17.70
Cleveland	— —	— —	— —	— —	— —	— —	16.00	— —	— —	— —	— —
Eldorado, Okla.	21.00	24.00	26.00	23.00	— —	51.00	14.00	— —	16.00	16.00	17.25
Fort Dodge, Iowa	20.00	23.00	25.00	22.00	36.50	50.00	13.00	15.00	15.00	15.00	16.25
Grand Rapids, Mich.	21.00	24.00	26.00	23.00	— —	51.00	14.00	16.00	16.00	16.00	17.25
Gypsum, Ohio	21.00	24.00	26.00	23.00	37.50	51.00	14.00	16.00	16.00	16.00	17.25
†Heath, Montana	22.50	23.00	25.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
Laramie, Wyo.	24.00	28.75	— —	— —	— —	55.75	18.75	— —	— —	20.75	— —
Loveland, Colo.	23.75	28.50	— —	— —	— —	55.50	18.50	— —	— —	20.50	— —
*Metro N. Y.—N. J. Whses.	20.70	24.00	26.45	23.45	— —	51.00	14.00	16.45	15.70	16.00	17.70
Miami, Fla.	— —	— —	— —	— —	— —	— —	16.00	— —	— —	— —	— —
Milwaukee, Wis.	— —	— —	— —	— —	— —	— —	15.43	— —	— —	— —	— —
National City, Mich.	21.00	24.00	26.00	23.00	— —	51.00	14.00	16.00	16.00	16.00	17.25
*Oakfield, N. Y.	20.70	24.00	26.35	23.35	38.80	51.00	14.00	16.35	15.70	16.00	17.60
*Philadelphia, Pa.	20.70	24.00	26.45	23.45	— —	51.00	14.00	16.45	15.70	16.00	17.70
Plastereo, Va.	20.00	23.00	25.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
Southard, Okla.	21.00	24.00	26.00	23.00	37.50	51.00	14.00	16.00	16.00	16.00	17.25
Sweetwater, Tex.	21.00	24.00	26.00	23.00	— —	51.00	14.00	16.00	16.00	16.00	17.25

* Minimum pickup 7500 sq. ft. patented gypsum board products. Note: Any mixture of regular patented board products (including special surfaced gypsum board products).

9961 The above prices apply to all pickups of all board embodying the claims of our patents in all markets except where an exception is made as follows:

(1) 32" x 48" Gypsum Board—if grey surfaced and round edged, is subject to the minimum liner board price, to any destination. Square edge or cutstock gypsum board in size 32" x 48" is subject to the minimum wallboard price, except where used for specific roof jobs only, size 32" x 48" cutstock board is subject to the minimum liner board price for such specific jobs.

(2) 36" x 48" Gypsum Board—36" x 48" is standard liner board size in all states for use on specific gypsum roof jobs only, and is subject to minimum liner board price for such specific gypsum roof jobs.

(3) Sales to contractors and prefabricated house manufacturers, also extras on odd sizes:

(a) On sales of standard sizes to contractors, roofing contractors, metal ceiling contractors and prefabricated house manufacturers, add differentials per M sq. ft. as follows. (Note: Sales to roofing contractors are for specific roof jobs only):

To Contractors (Incl. Metal Ceiling Contrs.) and to Prefabricated House Mfrs. Std. Sizes		To Roofing Contractors Std. Sizes	
Wall Bd. & Sheathing	Lath & Liner	Wall Bd. & Sheathing	Lath & Liner
2.50	1.25	1.25	1.25

(b) On sales of odd sizes to dealers, contractors, roofing contractors, metal ceiling contractors and prefabricated house manufacturers, add differentials per M sq. ft. as follows: (Note: Sales to roofing contractors are for specific roof job only):

To Dealers Odd Sizes		To Contractors (Incl. Metal Ceiling Contrs.) & to Prefabricated House Mfrs. Odd Sizes		To Roofing Contractors Odd Sizes	
Wall Bd. & Sheathing	Lath & Liner	Wall Bd. & Sheathing	Lath & Liner	Wall Bd. & Sheathing	Lath & Liner
2.50	1.25	5.00	2.50	1.25	1.25

Yours very truly,

UNITED STATES GYPSUM COMPANY

Vice President.

† Indicates changes in this reissue.

9962

UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

JUNE 12, 1937

Prices F. O.B. Trucks at Mills & Warehouses—Board License Bulletin No. 2 (Page 1)—Cancels Page 1 Dated May 7, 1937.

MR. C. NEWMAN,
Clerk,
General Sales.

DEAR SIRS: Referring to our license contract with you, you are hereby notified that effective June 17, 1937 the minimum prices at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent), including Haggerty patent number 1,500,452 are as follows:

Dealer Prices f.o.b. Trucks, Mills or Whses. (Applying for standard sizes as listed in Bulletin No. 4)	1/4" Gypsum Wallboard (Wt. 950 # per M)	3/8" Gypsum Wallboard (Wt. 1400 # per M) †	1/2" Gypsum Wallboard (Wt. 1900 # per M) †	1/2" Gypsum Sheathing (Wt. 1900 # per M)	3/4" Gypsum Wallboard (Wt. 3300 # per M)	3/8" Tiled Gypsum Wallbd. (Wt. 1400 # per M)	3/8" Gypsum Plaster Lath (Wt. 1400 # per M)	1/2" Gypsum Plaster Lath (Wt. 1900 # per M)	1/4" Gypsum Liner Board (Wt. 950 # per M)	3/8" Gypsum Liner Board (Wt. 1400 # per M)	1/2" Gypsum Liner Board (Wt. 1900 # per M)
†Acme, Texas	21.00	24.00	26.00	23.00	— —	51.00	14.00	16.00	16.00	16.00	17.25
†*Boston & Portsmouth	20.70	24.00	26.45	23.45	— —	51.00	14.00	16.45	15.70	16.00	17.70
Cleveland	— —	— —	— —	— —	— —	— —	16.00	— —	— —	— —	— —
†Eldorado, Okla.	21.00	24.00	26.00	23.00	— —	51.00	14.00	— —	16.00	16.00	17.25
†Fort Dodge, Iowa	20.00	23.00	25.00	22.00	36.50	50.00	13.00	15.00	15.00	15.00	16.25
†Grand Rapids, Mich.	21.00	24.00	26.00	23.00	— —	51.00	14.00	16.00	16.00	16.00	17.25
†Gypsum, Ohio	21.00	24.00	26.00	23.00	37.50	51.00	14.00	16.00	16.00	16.00	17.25
†Heath, Montana	22.50	23.00	25.00	32.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
†Laramie, Wyo.	24.00	28.75	— —	— —	— —	55.75	18.75	— —	— —	20.75	— —
†Loveland, Colo.	23.75	28.50	— —	— —	— —	55.50	18.50	— —	— —	20.50	— —
†*Metro N. Y.-N. J. Whses.	20.70	24.00	26.45	23.45	— —	51.00	14.00	16.45	15.70	16.00	17.70
Miami, Fla.	— —	— —	— —	— —	— —	— —	16.00	— —	— —	— —	— —
Milwaukee, Wis.	— —	— —	— —	— —	— —	— —	15.43	— —	— —	— —	— —
†National City, Mich.	21.00	24.00	26.00	23.00	— —	51.00	14.00	16.00	16.00	16.00	17.25
†*Oakfield, N. Y.	20.70	24.00	26.35	23.35	38.80	51.00	14.00	16.35	15.70	16.00	17.60
†*Philadelphia, Pa.	20.70	24.00	26.45	23.45	— —	51.00	14.00	16.45	15.70	16.00	17.70
†Plasterco, Va.	20.00	23.00	25.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
†Southard, Okla.	21.00	24.00	26.00	23.00	37.50	51.00	14.00	16.00	16.00	16.00	17.25
†Sweetwater, Tex.	21.00	24.00	26.00	23.00	— —	51.00	14.00	16.00	16.00	16.00	17.25

* Minimum pickup 7500 sq. ft. patented gypsum board products. Note: Any mixture of regular patented board products (including special surfaced gypsum board products).

9963 The above prices apply to all pickups of all board embodying the claims of our patents in all markets except where an exception is made as follows:

(1) 32″ x 48″ Gypsum Board—if grey surfaced and round edged, is subject to the minimum liner board price, to any destination. Square edge or cutstock gypsum board in size 32″ x 48″ is subject to the minimum wallboard price, except where used for specific roof jobs only, size 32″ x 48″ cutstock board is subject to the minimum liner board price for such specific jobs.

(2) 36″ x 48″ Gypsum Board—36″ x 48″ is standard liner board size in all states for use on specific gypsum roof jobs only, and is subject to minimum liner board price for such specific gypsum roof jobs.

(3) Sales to contractors and prefabricated house manufacturers, also extras on odd sizes:

(a) On sales of standard sizes to contractors, roofing contractors, metal ceiling contractors and prefabricated house manufacturers, add differentials per M sq. ft. as follows: (Note: Sales to roofing contractors are for specific roof jobs only):

To Contractors (Incl. Metal Ceiling Contrs.) and to Prefabricated House Mfrs. Std. Sizes		To Roofing Contractors Std. Sizes	
Wall Bd. & Sheathing	Lath & Liner	Wall Bd. & Sheathing	Lath & Liner
2.50	1.25	1.25	1.25

(b) On sales of odd sizes to dealers, contractors, roofing contractors, metal ceiling contractors and prefabricated house manufacturers, add differentials per M sq. ft. as follows: (Note: Sales to roofing contractors are for specific roof job only):

To Dealers Odd Sizes		To Contractors (Incl. Metal Ceiling Contrs.) & to Prefabricated House Mfrs. Odd Sizes		To Roofing Contractors Odd Sizes	
Wall Bd. & Sheathing	Lath & Liner	Wall Bd. & Sheathing	Lath & Liner	Wall Bd. & Sheathing	Lath & Liner
2.50	1.25	5.00	2.50	1.25	1.25

Yours very truly,

UNITED STATES GYPSUM COMPANY

Vice President.

† Indicates changes in this reissue.

9964 UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

MAY 7, 1937.

Prices F.O.B. Trucks at Mills & Warehouses—Board License Bulletin No. 2 (Page 1)—Cancels Page 1 Dated February 24, 1937.

C. NEWMAN

DEAR SIRS: Referring to our license contract with you, you are hereby notified that effective May 11, 1937 the minimum prices at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent), including Haggerty patent number 1,500,452 and Hite patent number 1,230,297, are as follows:

Dealer Prices f.o.b. Trucks, Mills or Whses. (Applying for standard sizes as listed in Bulletin No. 4)	1/4" Gypsum Wallboard (Wt. 950 # per M)	5/16" Gypsum Wallbd. (Wt. 1175 # per M) (See Note in Bul. No. 1)	3/8" Gypsum Wallboard (Wt. 1400 # per M)	1/2" Gypsum Wallboard (Wt. 1900 # per M)	1/2" Gypsum Sheathing (Wt. 1900 # per M)	3/4" Gypsum Wallboard (Wt. 3300 # per M)	3/8" Tiled Gypsum Wallbd. (Wt. 1400 # per M)	3/8" Gypsum Plaster Lath (Wt. 1400 # per M)	1/2" Gypsum Plaster Lath (Wt. 1900 # per M) †	1/4" Gypsum Liner Board (Wt. 950 # per M)	3/8" Gypsum Liner Board (Wt. 1400 # per M)	1/2" Gypsum Liner Board (Wt. 1900 # per M)
Acme, Texas	21.00	— —	26.00	27.00	23.00	— —	51.00	14.00	16.00	16.00	16.00	17.25
*Boston & Portsmouth	20.70	— —	25.00	26.45	23.45	— —	51.00	14.00	16.45	15.70	16.00	17.70
Cleveland	— —	— —	— —	— —	— —	— —	— —	16.00	— —	— —	— —	— —
Eldorado, Okla.	21.00	— —	26.00	27.00	23.00	— —	51.00	14.00	— —	16.00	16.00	17.25
Fort Dodge, Iowa	20.00	— —	25.00	26.00	22.00	36.50	50.00	13.00	15.00	15.00	15.00	16.25
Grand Rapids, Mich.	21.00	— —	26.00	27.00	23.00	— —	51.00	14.00	16.00	16.00	16.00	17.25
Gypsum, Ohio	21.00	25.00	26.00	27.00	23.00	37.50	51.00	14.00	16.00	16.00	16.00	17.25
Heath, Montana	22.50	— —	25.00	26.00	32.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
Laramie, Wyo.	24.00	— —	30.75	— —	— —	— —	55.75	18.75	— —	— —	20.75	— —
Loveland, Colo.	23.75	— —	30.50	— —	— —	— —	55.50	18.50	— —	— —	20.50	— —
*Metro N. Y.—N. J. Whses.	20.70	— —	25.00	26.45	23.45	— —	51.00	14.00	16.45	15.70	16.00	17.70
Miami, Fla.	— —	— —	— —	— —	— —	— —	— —	16.00	— —	— —	— —	— —
Milwaukee, Wis.	— —	— —	— —	— —	— —	— —	— —	15.43	— —	— —	— —	— —
*Oakfield, N. Y.	20.70	24.80	26.00	27.35	23.35	38.80	51.00	14.00	16.35	15.70	16.00	17.60
*Philadelphia, Pa.	20.70	— —	25.00	26.45	23.45	— —	51.00	14.00	16.45	15.70	16.00	17.70
Plasterco, Va.	20.00	— —	25.00	26.00	22.00	— —	50.00	13.00	15.00	15.00	15.00	16.25
Southard, Okla.	21.00	— —	26.00	27.00	23.00	37.50	51.00	14.00	16.00	16.00	16.00	17.25
Sweetwater, Tex.	21.00	— —	26.00	27.00	23.00	— —	51.00	14.00	16.00	16.00	16.00	17.25

* Minimum pickup 7500 sq. ft. patented gypsum board products. Note: Any mixture of regular patented board products (including special surfaced gypsum board products).

† Indicates changes (To become effective May 11, 1937).

9965 The above prices apply to all pickups of all board embodying the claims of our patents in all markets except where an exception is made as follows:

(1) 32" x 48" Gypsum Board—if grey surfaced and round edged, is subject to the minimum liner board price, to any destination. Square edge or cutstock gypsum board in size 32" x 48" is subject to the minimum wallboard price, except where used for specific roof jobs only, size 32" x 48" cutstock board is subject to the minimum liner board price for such specific jobs.

(2) 36" x 48" Gypsum Board—36" x 48" is standard liner board size in all states for use on specific gypsum roof jobs only, and is subject to minimum liner board price for such specific gypsum roof jobs.

(3) Sales to contractors and prefabricated house manufacturers, also extras on odd sizes:

(a) On sales of standard sizes to contractors, roofing contractors, metal ceiling contractors and prefabricated house manufacturers, add differentials per M sq. ft. as follows. (Note: Sales to roofing contractors are for specific roof jobs only):

To Contractors (Incl. Metal Ceiling Contrs.) and to Prefabricated House Mfrs. Std. Sizes		To Roofing Contractors Std. Sizes	
Wall Bd. & Sheathing	Lath & Liner	Wall Bd. & Sheathing	Lath & Liner
2.50	1.25	1.25	1.25

(b) On sales of odd sizes to dealers, contractors, roofing contractors, metal ceiling contractors and prefabricated house manufacturers, add differentials per M sq. ft. as follows: (Note: Sales to roofing contractors are for specific roof job only):

To Dealers Odd Sizes		To Contractors (Incl. Metal Ceiling Contrs.) & to Prefabricated House Mfrs. Odd Sizes		To Roofing Contractors Odd Sizes	
Wall Bd. & Sheathing	Lath & Liner	Wall Bd. & Sheathing	Lath & Liner	Wall Bd. & Sheathing	Lath & Liner
2.50	1.25	5.00	2.50	1.25	1.25

Yours very truly,

UNITED STATES GYPSUM COMPANY

Vice President.

† Indicates change.

9966 UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

FEBRUARY 24, 1937

Prices F.O.B. Trucks at Mills & Warehouses—Board License Bulletin No. 2—Cancels Bulletin No. 2 (Page 1) Dated December 29, 1936.

DEAR SIR: Referring to our license contract with you, you are hereby notified that effective March 1, 1937 the minimum prices at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent), including Haggerty patent number 1,500,452 and Hite patent number 1,230,297, are as follows:

Dealer Prices f.o.b. Trucks, Mills or Whses. (Applying for standard sizes as listed in Bulletin No. 4)	1/4" Gypsum Wallboard (Wt. 950# per M) †	5/16" Gypsum Wallboard (Wt. 1175# per M) †	3/8" Gypsum Wallboard (Wt. 1400# per M) † (See Note in Bul. No. 1)	1/2" Gypsum Wallboard (Wt. 1900# per M) †	1/2" Gypsum Sheathing (Wt. 1900# per M) †	3/4" Gypsum Wallboard (Wt. 3300# per M) †	3/8" Tiled Gypsum Wallbd. (Wt. 1400# per M)	3/8" Gypsum Plaster Lath (Wt. 1400# per M) †	1/4" Gypsum Liner Board (Wt. 950# per M) †	3/8" Gypsum Liner Board (Wt. 1400# per M) †	1/2" Gypsum Liner Board (Wt. 1900# per M) †
†Acme, Texas	21.00	— —	26.00	27.00	23.00	— —	51.00	14.00	16.00	16.00	17.25
†*Boston & Portsmouth	20.70	— —	25.00	26.45	23.45	— —	51.00	14.00	15.70	16.00	17.70
†Cleveland	— —	— —	— —	— —	— —	— —	— —	16.00	— —	— —	— —
†Eldorado, Okla.	21.00	— —	26.00	27.00	23.00	— —	51.00	14.00	16.00	16.00	17.25
†Fort Dodge, Iowa	20.00	— —	25.00	26.00	22.00	36.50	50.00	13.00	15.00	15.00	16.25
†Grand Rapids, Mich.	21.00	— —	26.00	27.00	23.00	— —	51.00	14.00	16.00	16.00	17.25
†Gypsum, Ohio	21.00	25.00	26.00	27.00	23.00	37.50	51.00	14.00	16.00	16.00	17.25
†Heath, Montana	22.50	— —	25.00	26.00	32.00	— —	50.00	13.00	15.00	15.00	16.25
†Laramie, Wyo.	24.00	— —	30.75	— —	— —	— —	55.75	18.75	— —	20.75	— —
†Loveland, Colo.	23.75	— —	30.50	— —	— —	— —	55.50	18.50	— —	20.50	— —
†*Metro N. Y.—N. J. Whses.	20.70	— —	25.00	26.45	23.45	— —	51.00	14.00	15.70	16.00	17.70
†Miami, Fla.	— —	— —	— —	— —	— —	— —	— —	16.00	— —	— —	— —
†Milwaukee, Wis.	— —	— —	— —	— —	— —	— —	— —	15.43	— —	— —	— —
†*Oakfield, N. Y.	20.70	24.80	26.00	27.35	23.35	38.80	51.00	14.09	15.70	16.00	17.60
†*Philadelphia, Pa.	20.70	— —	25.00	26.45	23.45	— —	51.00	14.00	15.70	16.00	17.70
†Plasterco, Va.	20.00	— —	25.00	26.00	22.00	— —	50.00	13.00	15.00	15.00	16.25
†Southard, Okla.	21.00	— —	26.00	27.00	23.00	37.50	51.00	14.00	16.00	16.00	17.25
†Sweetwater, Tex.	21.00	— —	26.00	27.00	23.00	— —	51.00	14.00	16.00	16.00	17.25

†*: Minimum pickup 7500 sq. ft. patented gypsum board products. Note: Any mixture of regular patented board products (including special surfaced gypsum board products).

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†(1) 32″ x 48″ Gypsum Board—if grey surfaced and round edged, is subject to the minimum liner board price, to any destination. Square edge or cutstock gypsum board in size 32″ x 48″ is subject to the minimum wallboard price, except where used for specific roof jobs only, size 32″ x 48″ cutstock board is subject to the minimum liner board price for such specific jobs.

†(2) 36″ x 48″ Gypsum Board—36″ x 48″ is standard liner board size in all states for use on specific gypsum roof jobs only, and is subject to minimum liner board price for such specific gypsum roof jobs.

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(a) On sales of standard sizes to contractors, roofing contractors, metal ceiling contractors and prefabricated house manufacturers, add differentials per M sq. ft. as follows: (Note: Sales to roofing contractors are for specific roof jobs only):

To Contractors (Incl. Metal Ceiling Contrs.) and to Prefabricated House Mfrs. Std. Sizes		To Roofing Contractors Std. Sizes	
Wall Bd. & Sheathing	Lath & Liner	Wall Bd. & Sheathing	Lath & Liner
2.50	1.25	1.25	1.25

(b) On sales of odd sizes to dealers, contractors, roofing contractors, metal ceiling contractors and prefabricated house manufacturers, add differentials per M sq. ft. as follows: (Note: Sales to roofing contractors are for specific roof job only):

To Dealers Odd Sizes		To Contractors (Incl. Metal Ceiling Contrs.) & to Prefabricated House Mfrs. Odd Sizes		To Roofing Contractors Odd Sizes	
Wall Bd. & Sheathing	Lath & Liner	Wall Bd. & Sheathing	Lath & Liner	Wall Bd. & Sheathing	Lath & Liner
2.50	1.25	5.00	2.50	1.25	1.25

Yours very truly,

UNITED STATES GYPSUM COMPANY

Vice President.

9968 UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

DECEMBER 29, 1936

Prices F.O.B. Trucks at Mills & Warehouses—Board License Bulletin No. 2—Cancels Bulletin No. 2 (Page 1) Dated September 11, 1936 and All Supplements Thereto.

DEAR SIR: Referring to our license contract with you, you are hereby notified that effective January 1, 1937 the minimum prices at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent), including Haggerty patent number 1,500,452 and Hite patent number 1,230,297, are as follows:

Dealer Prices f.o.b. Trucks, Mills or Whses. (Applying for standard sizes as listed in Bulletin No. 4)	1/4" Gypsum Wallboard (Wt. 950# per M)	5/16" Gypsum Wallboard (Wt. 1175# per M) (See Bul. No. 1 Note *)	3/8" Gypsum Wallboard (Wt. 1400# per M)	1/2" Gypsum Wallboard (Wt. 1900# per M)	1/2" Gypsum Sheathing (Wt. 1900# per M)	3/4" Gypsum Wallboard (Wt. 3300# per M)	3/8" Tiled Gypsum Wallbd. (Wt. 1400# per M)	1/4" Gypsum Plasterboard (Wt. 950# per M)	5/16" Gypsum Plasterboard (Wt. 1175# per M)	3/8" Gypsum Plasterboard (Wt. 1400# per M)	1/2" Gypsum Plasterboard (Wt. 1900# per M)
Acme, Texas	21.00	— —	26.00	27.00	23.00	— —	51.00	16.00	— —	16.00	17.25
*Boston & Portsmouth	21.00	— —	26.00	27.00	23.00	— —	51.00	16.00	— —	16.00	17.25
†Cleveland	— —	— —	— —	— —	— —	— —	— —	— —	18.00	18.00	— —
Eldorado, Okla.	21.00	— —	26.00	27.00	23.00	— —	51.00	16.00	— —	16.00	17.25
Fort Dodge, Iowa	20.00	— —	25.00	26.00	22.00	36.50	50.00	15.00	— —	15.00	16.25
Grand Rapids, Mich.	21.00	— —	26.00	27.00	23.00	— —	51.00	16.00	— —	16.00	17.25
Gypsum, Ohio	21.00	25.00	26.00	27.00	23.00	37.50	51.00	16.00	— —	16.00	17.25
†Heath, Montana	22.50	— —	25.00	26.00	32.00	— —	50.00	15.00	— —	15.00	16.25
†Laramie, Wyo.	24.00	— —	30.75	— —	— —	— —	55.75	— —	— —	20.75	— —
†Loveland, Colo.	23.75	— —	30.50	— —	— —	— —	55.50	— —	— —	20.50	— —
*Metro N. Y.—N. J. Whses.	21.00	— —	26.00	27.00	23.00	— —	51.00	16.00	— —	16.00	17.25
†Miami, Fla.	— —	— —	— —	— —	— —	— —	— —	— —	16.00	23.70	— —
†Milwaukee, Wis.	— —	— —	— —	— —	— —	— —	— —	— —	— —	17.43	— —
*Oakfield, N. Y.	21.00	25.00	26.00	27.00	23.00	37.50	51.00	16.00	— —	16.00	17.25
*Philadelphia, Pa.	21.00	— —	26.00	27.00	23.00	— —	51.00	16.00	— —	16.00	17.25
Plasterco, Va.	20.00	— —	25.00	26.00	22.00	— —	50.00	15.00	— —	15.00	16.25
Southard, Okla.	21.00	— —	26.00	27.00	23.00	37.50	51.00	16.00	— —	16.00	17.25
Sweetwater, Tex.	21.00	— —	26.00	27.00	23.00	— —	51.00	16.00	— —	16.00	17.25

* Minimum pickup 5000 sq. ft. patented gypsum board and/or lath products. Note: Any mixture of regular patented board (including special surfaced gypsum board products) and metallized patented board products may be combined to make up the 5000 feet minimum. Exception: 3/8" Tiled Gypsum Wallboard or special surfaced gypsum board products may be picked up in any quantity at Metro N. Y.—N. J. Warehouses.

9969 The above prices apply to all pickups of all board embodying the claims of our patents in all markets except where an exception is made as follows:

(1) 24" x 48" Cutstock Plasterboard: $18.50 per M sq. ft. for 1/4" and 3/8" thicknesses and $19.75 per M sq. ft. for 1/2" thickness, f.o.b. trucks at Southard, Oklahoma.

(2) 32" x 48" Gypsum Board. In all areas 32" x 48" gypsum board is subject to the minimum wallboard price except:

(a) Where used for specific roof jobs it is subject to the minimum plasterboard price for such specific jobs.

(b) In all states east of the Mississippi River and in the States of Iowa, Minnesota, Nebraska, Colorado, Missouri, Kansas, Oklahoma, Arkansas and Louisiana, 32" x 48" board, if grey surfaced and round edged, is subject to minimum plasterboard price.

(3) 36" x 48" Gypsum Board. 36" x 48" is standard plasterboard size in all states for use on specific gypsum roof jobs only and is subject to minimum plasterboard price for such specific gypsum roof jobs.

(4) Sales to contractors and prefabricated house manufacturers, also extras on odd sizes:

(a) On sales of standard sizes to contractors, roofing contractors, metal ceiling contractors and prefabricated house manufacturers, add differentials per M sq. ft. as follows. (Note: Sales to roofing contractors are for specific roof jobs only):

To Contractors (Incl. Metal Ceiling Contrs.) and to Prefabricated House Mfrs. Std. Sizes		To Roofing Contractors Std. Sizes	
W. Bd.	Pl. Bd.	W. Bd.	Pl. Bd.
2.50	1.25	1.25	1.25

(b) On sales of odd sizes to dealers, contractors, roofing contractors, metal ceiling contractors and prefabricated house manufacturers, add differentials per M sq. ft. as follows: (Note: Sales to roofing contractors are for specific roof job only):

To Dealers		To Contractors (Incl. Metal Ceiling Contrs.) & To Prefabricated House Mfrs.		To Roofing Contractors	
Odd Sizes		Odd Sizes		Odd Sizes	
W. Bd.	Pl. Bd.	W. Bd.	Pl. Bd.	W. Bd.	Pl. Bd.
2.50	1.25	5.00	2.50	1.25	1.25

Yours very truly,

UNITED STATES GYPSUM COMPANY

Vice President.

9970 In all markets except where an exception is made as follows:

(1) 24″ x 48″ Cutstock Plasterboard: $18.50 per M sq. ft. for 1/4″ and 3/8″ thicknesses and $19.75 per M sq. ft. for 1/2″ thickness, f.o.b. trucks at Southard, Oklahoma.

(2) 32″ x 48″ Gypsum Board. In all areas 32″ x 48″ gypsum board is subject to the minimum wallboard price except:

(a) Where used for specific roof jobs it is subject to the minimum plasterboard price for such specific jobs.

(b) In all states east of the Mississippi River and in the States of Iowa, Minnesota, Nebraska, Colorado, Missouri, Kansas, Oklahoma, Arkansas and Louisiana, 32″ x 48″ board, if grey surfaced and round edged, is subject to minimum plasterboard price.

(3) 36″ x 48″ Gypsum Board. 36″ x 48″ is standard plasterboard size in all states for use on specific gypsum roof jobs only and is subject to minimum plasterboard price for such specific gypsum roof jobs.

(4) Sales to contractors and prefabricated house manufacturers, also extras on odd sizes:

(a) On sales of standard sizes to contractors, roofing contractors, metal ceiling contractors and prefabricated house manufacturers, add differentials per M sq. ft. as follows. (Note: Sales to roofing contractors are for specific roof jobs only):

To Contractors (Incl. Metal Ceiling Contrs.) and to Prefabricated House Mfrs.		To Roofing Contractors	
Std. Sizes		Std. Sizes	
W. Bd.	Pl. Bd.	W. Bd.	Pl. Bd.
2.50	1.25	1.25	1.25

(b) On sales of odd sizes to dealers, contractors, roofing contractors, metal ceiling contractors and prefabricated house manufacturers, add differentials per M sq. ft. as follows. (Note: Sales to roofing contractors are for specific roof job only):

To Dealers		To Contractors (Incl. Metal Ceiling Contrs.) & to Prefabricated House Mfrs.		To Roofing Contractors	
Odd Sizes		Odd Sizes		Odd Sizes	
W. Bd.	Pl. Bd.	W. Bd.	Pl. Bd.	W. Bd.	Pl. Bd.
2.50	1.25	5.00	2.50	1.25	1.25

Yours very truly,

UNITED STATES GYPSUM COMPANY

Vice President.

9971

UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

SEPTEMBER 11, 1936

Prices F.O.B. Trucks at Mills & Warehouses—Board License Bulletin No. 2—Cancels Bulletin No. 2 Dated August 13, 1936.

DEAR SIR: Referring to our license contract with you, you are hereby notified that effective September 15, 1936 the minimum prices at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent), including Haggerty patent number 1,500,452 and Hite patent number 1,230,297, are as follows:

Dealer Prices f.o.b. Trucks, Mills or Whses. (Applying for standard sizes as listed in Bulletin No. 4)	1/4" Gypsum Wallboard (Wt. 950 #. per M) †	5/16" Gypsum Wallboard (Wt. 1175 # per M) (See Bul. No. 1 Note *)	3/8" Gypsum Wallboard (Wt. 1400 # per M) †	1/2" Gypsum Wallboard (Wt. 1900 # per M) †	1/2" Gypsum Sheathing (Wt. 1900 # per M) †	3/4" Gypsum Wallboard (Wt. 3300 # per M)	3/8" Tiled Gypsum Wallbd. (Wt. 1400 # per M)	1/4" Gypsum Plasterboard (Wt. 950 # per M)	5/16" Gypsum Plasterboard (Wt. 1175 # per M)	3/8" Gypsum Plasterboard (Wt. 1400 # per M)	1/2" Gypsum Plasterboard (Wt. 1900 # per M).
†Acme, Texas	21.00	— —	26.00	27.00	23.00	— —	51.00	16.00	— —	16.00	17.25
†*Boston & Portsmouth	21.00	— —	26.00	27.00	23.00	— —	51.00	16.00	— —	16.00	17.25
Cleveland	— —	— —	— —	— —	— —	— —	— —	— —	16.25	18.00	— —
†Eldorado, Okla.	21.00	— —	26.00	27.00	23.00	— —	51.00	16.00	— —	16.00	17.25
†Fort Dodge, Iowa	20.00	— —	25.00	26.00	22.00	36.50	50.00	15.00	— —	15.00	16.25
†Grand Rapids, Mich.	21.00	— —	26.00	27.00	23.00	— —	51.00	16.00	— —	16.00	17.2
†Gypsum, Ohio	21.00	25.00	26.00	27.00	23.00	37.50	51.00	16.00	— —	16.00	17.25
Laramie, Wyo.	24.25	— —	31.25	— —	— —	— —	56.25	— —	— —	21.25	— —
Loveland, Colo.	24.00	— —	31.00	— —	— —	— —	56.00	— —	— —	21.00	— —
†*Metro N. Y.—N. J. Whses.	21.00	— —	26.00	27.00	23.00	— —	51.00	16.00	— —	16.00	17.25
Miami, Fla.	— —	— —	— —	— —	— —	— —	— —	— —	16.00	23.12	— —
Milwaukee, Wis.	— —	— —	— —	— —	— —	— —	— —	— —	— —	17.57	— —
†*Oakfield, N. Y.	21.00	25.00	26.00	27.00	23.00	37.50	51.00	16.00	— —	16.00	17.25
†*Philadelphia, Pa.	21.00	— —	26.00	27.00	23.00	— —	51.00	16.00	— —	16.00	17.25
†Plastereo, Va.	20.00	— —	25.00	26.00	22.00	— —	50.00	15.00	— —	15.00	16.25
†Southard, Okla.	21.00	— —	26.00	27.00	23.00	37.50	51.00	16.00	— —	16.00	17.25
†Sweetwater, Tex.	21.00	— —	26.00	27.00	23.00	— —	51.00	16.00	— —	16.00	17.25

* Minimum pickup 5000 sq. ft. patented gypsum board and/or lath products. Note: Any mixture of regular patented board (including special surfaced gypsum board products) and metallized patented board products may be combined to make up the 5000 feet minimum. Exception: 3/8" Tiled Gypsum Wallboard or special surfaced gypsum board products may be picked up in any quantity at Metro N. Y.—N. J. Warehouses.

9972 The above prices apply to all pickups of all board embodying the claims of our patents in all markets except where an exception is made as follows:.

(1) 24" x 48" Cutstock Plasterboard: $18.50 per M sq. ft. for 1/4" and 3/8" thicknesses and $19.75 per M sq. ft. for 1/2" thickness, f.o.b. trucks at Southard, Oklahoma.

(2) 1/4" and 3/8" Regular or Cutstock Plasterboard. Minimum price when picked up for destinations in Niagara, Erie, (including the town of Gowanda, New York) Monroe and Wayne Counties, N. Y.: 1/4" and 3/8" thicknesses $15.00 per M sq. ft. f.o.b. trucks at Oakfield, N. Y. This price does not apply to 32" x 48" board.

(3) 32" x 48" Gypsum Board. In all areas 32" x 48" gypsum board is subject to the minimum wallboard price except:

(a) Where used for specific roof jobs it is subject to the minimum plasterboard price for such specific jobs.

(b) In all states east of the Mississippi River and in the states of Iowa, Minnesota, Nebraska, Colorado, Missouri, Kansas, Oklahoma, Arkansas and Louisiana, 32" x 48" board, if grey surfaced and round edged, is subject to minimum plasterboard price.

(4) 36" x 48" Gypsum Board. 36" x 48" is standard plasterboard size in all states for use on specific gypsum roof jobs only and is subject to minimum plasterboard price for such specific gypsum roof jobs.

(5) Sales to contractors and prefabricated house manufacturers, also extras on odd sizes:

(a) On sales of standard sizes to contractors, roofing contractors, metal ceiling contractors and prefabricated house manufacturers, add differentials per M sq. ft. as follows. (Note: Sales to roofing contractors are for specific roof jobs only):

To Contractors (Incl. Metal Ceiling Contrs.) and to Prefabricated House Mfrs. Std. Sizes		To Roofing Contractors Std. Sizes	
W. Bd.	Pl. Bd.	W. Bd.	Pl. Bd.
2.50	1.25	1.25	1.25

(b) On sales of odd sizes to dealers, contractors, roofing contractors, metal ceiling contractors and prefabricated house manufacturers, add differentials per M sq. ft. as follows. (Note: Sales to roofing contractors are for specific roof job only):

To Dealers Odd Sizes		To Contractors (Incl. Metal Ceiling Contrs.) & To Prefabricated House Mfrs. Odd Sizes		To Roofing Contractors Odd Sizes	
W. Bd.	Pl. Bd.	W. Bd.	Pl. Bd.	W. Bd.	Pl. Bd.
2.50	1.25	5.00	2.50	1.25	1.25

Very truly yours,

UNITED STATES GYPSUM COMPANY

Vice President.

† Indicates change in this reissue.

9973

UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

AUGUST 13, 1936

Prices F.O.B. Trucks at Mills & Warehouses—Board License Bulletin No. 2—Cancels Bulletin No. 2 Dated July 23, 1936.

DEAR SIR: Referring to our license contract with you, you are hereby notified that effective August 17, 1936 the minimum prices at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent), including Haggerty patent number 1,500,452 and Hite patent number 1,230,297, are as follows:

Dealer Prices f.o.b. Trucks, Mills or Whses. (Applying for standard sizes as listed in Bulletin No. 4)	1/4" Gypsum Wallboard (Wt. 950# per M)	5/16" Gypsum Wallboard (Wt. 1175# per M) (See Bul. No. 1 Note *)	3/8" Gypsum Wallboard (Wt. 1400# per M)	1/2" Gypsum Wallboard (Wt. 1900# per M) *	1/2" Gypsum Sheathing (Wt. 1900# per M)	3/4" Gypsum Wallboard (Wt. 3300# per M)	3/8" Tiled Gypsum Wallbd. (Wt. 1400# per M)	1/4" Gypsum Plasterboard (Wt. 950# per M)	5/16" Gypsum Plasterboard (Wt. 1175# per M)	3/8" Gypsum Plasterboard (Wt. 1400# per M)	1/2" Gypsum Plasterboard (Wt. 1900# per M)
Acme, Texas	22.00	— —	26.00	27.00	23.00	— —	51.00	16.00	— —	16.00	17.25
*Boston & Portsmouth	22.00	— —	28.00	30.00	23.00	— —	51.00	16.00	— —	16.00	17.25
Cleveland	— —	— —	— —	— —	— —	— —	— —	— —	16.25	18.00	— —
Eldorado, Okla.	22.00	— —	26.00	27.00	23.00	— —	51.00	16.00	— —	16.00	17.25
†Fort Dodge, Iowa	21.00	— —	25.00	26.00	22.00	36.50	50.00	15.00	— —	15.00	16.25
Grand Rapids, Mich.	22.00	— —	28.00	30.00	23.00	— —	51.00	16.00	— —	16.00	17.25
Gypsum, Ohio	22.00	25.00	28.00	30.00	23.00	37.50	51.00	16.00	— —	16.00	17.25
Laramie, Wyo.	24.25	— —	31.25	— —	— —	— —	56.25	— —	— —	21.25	— —
Loveland, Colo.	24.00	— —	31.00	— —	— —	— —	56.00	— —	— —	21.00	— —
*Metro N. Y.—N. J. Whses.	22.00	— —	28.00	30.00	23.00	— —	51.00	16.00	— —	16.00	17.25
Miami, Fla.	— —	— —	— —	— —	— —	— —	— —	— —	16.00	23.12	— —
Milwaukee, Wis.	— —	— —	— —	— —	— —	— —	— —	— —	— —	17.57	— —
*Oakfield, N. Y.	22.00	25.00	28.00	30.00	23.00	37.50	51.00	16.00	— —	16.00	17.25
*Philadelphia, Pa.	22.00	— —	28.00	30.00	23.00	— —	51.00	16.00	— —	16.00	17.25
†Plastereo, Va.	21.00	— —	25.00	26.00	23.00	— —	51.00	16.00	— —	16.00	17.25
Southard, Okla.	22.00	— —	26.00	27.00	23.00	37.50	51.00	16.00	— —	16.00	17.25
Sweetwater, Tex.	22.00	— —	26.00	27.00	23.00	— —	51.00	16.00	— —	16.00	17.25

* Minimum pickup 5000 sq. ft. patented gypsum board and/or lath products. Note: Any mixture of regular patented board (including special surfaced gypsum board products), and metallized patented board products may be combined to make up the 5000 feet minimum. Exception: 3/8" Tiled Gypsum Wallboard or special surfaced gypsum board products may be picked up in any quantity at Metro N. Y.—N. J. Warehouses.



9974 The above prices apply to all pickups of all board embodying the claims of our patents in all markets except where an exception is made as follows:

(1) 24″ x 48″ Cutstock Plasterboard: $18.50 per M sq. ft. for 1/4″ and 3/8″ thicknesses and $19.75 per M sq. ft. for 1/2″ thickness, f.o.b. trucks at Southard, Oklahoma.

(2) 1/4″ and 3/8″ Cutstock Plasterboard. Minimum price when picked up for destinations in Niagara, Erie, (including the town of Gowanda, New York) Monroe and Wayne Counties, N. Y.: 1/4″ and 3/8″ thicknesses $13.50 per M sq. ft. f.o.b. trucks at Oakfield, N. Y. This price does not apply to 32″ x 48″ board.

(3) 32″ x 48″ Gypsum Board. In all areas 32″ x 48″ gypsum board is subject to the minimum wallboard price except:

(a) Where used for specific roof jobs it is subject to the minimum plasterboard price for such specific jobs.

(b) In all states east of the Mississippi River and in the states of Iowa, Minnesota, Nebraska, Colorado, Missouri, Kansas, Oklahoma, Arkansas and Louisana, 32″ x 48″ board, if grey surfaced and round edged, is subject to minimum plasterboard price.

(4) 36″ x 48″ Gypsum Board. 36″ x 48″ is standard plasterboard size in all states for use on specific gypsum roof jobs only and is subject to minimum plasterboard price for such specific gypsum roof jobs.

(5) Sales to contractors and prefabricated house manufacturers, also extras on odd sizes:

(a) On sales of standard sizes to contractors, roofing contractors, metal ceiling contractors and prefabricated house manufacturers, add differentials per M sq. ft. as follows. (Note: Sales to roofing contractors are for specific roof jobs only):

To Contractors (Incl. Metal Ceiling Contrs.) and to Prefabricated House Mfrs. Std. Sizes		To Roofing Contractors Std. Sizes	
W. Bd.	Pl. Bd.	W. Bd.	Pl. Bd.
2.50	1.25	1.25	1.25

(b) On sales of odd sizes to dealers, contractors, roofing contractors, metal ceiling contractors and prefabricated house manufacturers, add differentials per M sq. ft. as follows. (Note: Sales to roofing contractors are for specific roof jobs only):

To Dealers		To Contractors (Incl. Metal Ceiling Contrs.) & To Prefabricated House Mfrs.		To Roofing Contractors	
Odd Sizes		Odd Sizes		Odd Sizes	
W. Bd.	Pl. Bd.	W. Bd.	Pl. Bd.	W. Bd.	Pl. Bd.
2.50	1.25	5.00	2.50	1.25	1.25

Very truly yours,

UNITED STATES GYPSUM COMPANY

Vice President.

† Indicates change in this reissue.

9975 UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

JULY 23, 1936.

Prices F.O.B. Trucks at Mills & Warehouses—Board License Bulletin No. 2—Cancels Bulletin No. 2 Dated July 13, 1936.

DEAR SIR: Referring to our license contract with you, you are hereby notified that effective July 28, 1936 the minimum prices at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent), including Haggerty patent number 1,500,452 and Hite patent number 1,230,297, are as follows:

Dealer Prices f.o.b. Trucks, Mills or Warehouses (Applying for standard sizes as listed in Bulletin No. 4)	1/4" Gypsum Wallboard (Wt. 950# per M)	5/16" Gypsum Wallboard (Wt. 1175# per M) (See Bul. No. 1 Note *)	3/8" Gypsum Wallboard (Wt. 1400# per M)	1/2" Gypsum Wallboard (Wt. 1900# per M)	1/2" Gypsum Sheathing (Wt. 1900# per M)	3/4" Gypsum Wallboard (Wt. 3300# per M)	3/8" Tiled Gypsum Wallbd. (Wt. 1400# per M)	1/4" Gypsum Plasterboard (Wt. 950# per M)	5/16" Gypsum Plasterboard (Wt. 1175# per M)	3/8" Gypsum Plasterboard (Wt. 1400# per M)	1/2" Gypsum Plasterboard (Wt. 1900# per M)
†Acme, Texas	22.00	— —	26.00	27.00	23.00	— —	51.00	16.00	— —	16.00	17.25
†*Boston & Portsmouth	22.00	— —	28.00	30.00	23.00	— —	51.00	16.00	— —	16.00	17.25
Cleveland	— —	— —	— —	— —	— —	— —	— —	— —	16.25	18.00	— —
†Eldorado, Okla.	22.00	— —	26.00	27.00	23.00	— —	51.00	16.00	— —	16.00	17.25
Fort Dodge, Iowa	21.00	— —	26.00	28.00	22.00	36.50	50.00	15.00	— —	15.00	16.25
†Grand Rapids, Mich.	22.00	— —	28.00	30.00	23.00	— —	51.00	16.00	— —	16.00	17.25
†Gypsum, Ohio	22.00	25.00	28.00	30.00	23.00	37.50	51.00	16.00	— —	16.00	17.25
Laramie, Wyo.	24.25	— —	31.25	— —	— —	— —	56.25	— —	— —	21.25	— —
†Loveland, Colo.	24.00	— —	31.00	— —	— —	— —	56.00	— —	— —	21.00	— —
†*Metro N. Y.—N. J. Whses.	22.00	— —	28.00	30.00	23.00	— —	51.00	16.00	— —	16.00	17.25
†Miami, Fla.	— —	— —	— —	— —	— —	— —	— —	— —	16.00	23.12	— —
Milwaukee, Wis.	— —	— —	— —	— —	— —	— —	— —	— —	— —	17.57	— —
†*Oakfield, N. Y.	22.00	25.00	28.00	30.00	23.00	37.50	51.00	16.00	— —	16.00	17.25
†*Philadelphia, Pa.	22.00	— —	28.00	30.00	23.00	— —	51.00	16.00	— —	16.00	17.25
†Plasterco, Va.	21.00	— —	27.00	29.00	23.00	— —	51.00	16.00	— —	16.00	17.25
†Southard, Okla.	22.00	— —	26.00	27.00	23.00	37.50	51.00	16.00	— —	16.00	17.25
†Sweetwater, Tex.	22.00	— —	26.00	27.00	23.00	— —	51.00	16.00	— —	16.00	17.25

* Minimum pickup 5000 sq. ft. patented gypsum board and/or lath products. Note: Any mixture of regular patented board (including special surfaced gypsum board products), and metallized patented board products may be combined to make up the 5000 feet minimum. Exception: 3/8" Tiled Gypsum Wallboard or special surfaced gypsum board products may be picked up in any quantity at Metro N. Y.—N. J. Warehouses.

9976 The above prices apply to all pickups of all board embodying the claims of our patents in all markets except where an exception is made as follows:

(1) 24"x48" Cutstock Plasterboard: $18.50 per M sq. ft. for 1/4" and 3/8" thicknesses and $19.75 per M sq. ft. for 1/2" thickness, f.o.b. trucks at Southard, Oklahoma.

(2) 1/4" and 3/8" Cutstock Plasterboard. Minimum price when picked up for destinations in Niagara, Erie, (including the town of Gowanda, New York) Monroe and Wayne Counties, N. Y.: 1/4" and 3/8" thicknesses $13.50 per M sq. ft. f.o.b. trucks at Oakfield, N. Y. This price does not apply to 32"x48" board.

(3) 32"x48" Gypsum Board. In all areas 32"x48" gypsum board is subject to the minimum wallboard price except:

(a) Where used for specific roof jobs it is subject to the minimum plasterboard price for such specific jobs.

(b) In all states east of the Mississippi River and in the states of Iowa, Minnesota, Nebraska, Colorado, Missouri, Kansas, Oklahoma, Arkansas and Louisiana, 32"x48" board, if grey surfaced and round edged, is subject to minimum plasterboard price.

(4) 36"x48" Gypsum Board. 36"x48" is standard plasterboard size in all States for use on specific gypsum roof jobs only and is subject to minimum plasterboard price for such specific gypsum roof jobs.

(5) Sales to contractors and prefabricated house manufacturers, also extras on odd sizes:

(a) On sales of standard sizes to contractors, roofing contractors, metal ceiling contractors and prefabricated house manufacturers, add differentials per M sq. ft. as follows. (Note: Sales to roofing contractors are for specific roof jobs only):

To Contractors (Incl. Metal Ceiling Contrs.) and to Prefabricated House Mfrs. Std. Sizes		To Roofing Contractors Std. Sizes	
W. Bd.	Pl. Bd.	W. Bd.	Pl. Bd.
2.50	1.25	1.25	1.25

(b) On sales of odd sizes to dealers, contractors roofing contractors, metal ceiling contractors and prefabricated house manufacturers, add differentials per M sq. ft. as follows. (Note: Sales to roofing contractors are for specific roof jobs only):

To Dealers		To Contractors (Incl. Metal Ceiling Contrs.) & To Prefabricated House Mfrs.		To Roofing Contractors	
Odd Sizes		Odd Sizes		Odd Sizes	
W. Bd.	Pl. Bd.	W. Bd.	Pl. Bd.	W. Bd.	Pl. Bd.
2.50	1.25	5.00	2.50	1.25	1.25

Very truly yours,

UNITED STATES GYPSUM COMPANY,

Vice President.

† Indicates change in this reissue.

9977

UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

JULY 13, 1936.

Prices F.O.B. Trucks at Mills & Warehouses—Board License Bulletin No. 2—Cancels Bulletin No. 2 Dated July 10, 1936.

DEAR SIR: Referring to our license contract with you, you are hereby notified that effective immediately the minimum prices at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent), including Haggerty patent number 1,500,452 and Hite patent number 1,230,297, are as follows:

Dealer Prices f.o.b. Trucks, Mills or Warehouses (Applying for standard sizes as listed in Bulletin No. 4)	1/4" Gypsum Wallboard (Wt. 950# per M)	5/16" Gypsum Wallboard (Wt. 1175# per M) (See Bul. No. 1 Note *)	3/3" Gypsum Wallboard (Wt. 1400# per M)	1/2" Gypsum Wallboard (Wt. 1900# per M)	1/2" Gypsum Sheathing (Wt. 1900# per M)	3/4" Gypsum Wallboard (Wt. 3300# per M)	3/8" Tiled Gypsum Wallbd. (Wt. 1400# per M)	1/4" Gypsum Plasterboard (Wt. 950# per M)	5/16" Gypsuth Plasterboard (Wt. 1175# per M)	3/8" Gypsum Plasterboard (Wt. 1400# per M)	1/2" Gypsum Plasterboard (Wt. 1900# per M)
Acme, Texas	23.00	— —	27.00	28.00	28.00	— —	52.00	17.00	— —	17.00	18.25
*Boston & Portsmouth	23.50	— —	28.00	32.00	23.00	— —	51.00	16.00	— —	16.00	17.25
Cleveland	— —	— —	— —	— —	— —	— —	— —	— —	16.25	18.00	— —
Eldorado, Okla.	23.00	— —	27.00	28.00	28.00	— —	52.00	17.00	— —	17.00	18.25
†Fort Dodge, Iowa	21.00	— —	26.00	28.00	22.00	36.50	50.00	15.00	— —	15.00	16.25
Grand Rapids, Mich.	24.50	— —	30.50	33.00	24.00	— —	52.00	17.00	— —	17.00	18.25
Gypsum, Ohio	24.50	28.50	30.50	33.00	24.00	38.50	52.00	17.00	— —	17.00	18.25
Laramie, Wyo.	24.25	— —	31.25	— —	— —	— —	56.25	— —	— —	21.25	— —
Loveland, Colo.	24.00	— —	31.00	39.00	— —	— —	56.00	— —	— —	21.00	— —
*Metro N. Y.—N. J. Whses.	23.50	— —	29.50	32.00	23.00	— —	51.00	16.00	— —	16.00	17.25
Miami, Fla.	— —	— —	— —	— —	— —	— —	— —	— —	— —	23.12	— —
Milwaukee, Wis.	— —	— —	— —	— —	— —	— —	— —	— —	— —	17.57	— —
*Oakfield, N. Y.	24.50	28.50	30.50	33.00	24.00	38.50	52.00	17.00	— —	17.00	18.25
*Philadelphia, Pa.	23.50	— —	29.50	32.00	23.00	— —	51.00	16.00	— —	16.00	17.25
Plasterco, Va.	21.00	— —	27.00	32.00	23.00	— —	51.00	16.00	— —	16.00	17.25
Southard, Okla.	23.00	— —	27.00	28.00	28.00	38.50	52.00	17.00	— —	17.00	18.25
Sweetwater, Tex.	23.00	— —	27.00	28.00	28.00	— —	52.00	17.00	— —	17.00	18.25

* Minimum pickup 5000 sq. ft. patented gypsum board and/or lath products. Note: Any mixture of regular patented board (including special surfaced gypsum board products), and metallized patented board products may be combined to make up the 5000 feet minimum. Exception: 3/8" Tiled Gypsum Wallboard or special surfaced gypsum board products may be picked up in any quantity at Metro N. Y.—N. J. Warehouses.

9978 The above prices apply to all pickups of all board embodying the claims of our patents in all markets except where an exception is made as follows:

(1) 24"x48" Cutstock Plasterboard: $19.50 per M sq. ft. for 1/4" and 3/8" thicknesses and $20.75 per M sq. ft. for 1/2" thickness, f.o.b. trucks at Southard, Oklahoma.

(2) 1/4" and 3/8" Cutstock Plasterboard. Minimum price when picked up for destinations in Niagara, Erie, (including the town of Gowanda, New York) Monroe and Wayne Counties, N. Y.: 1/4" and 3/8" thicknesses $14.50 per M sq. ft. f.o.b. trucks at Oakfield, N. Y. This price does not apply to 32"x48" board.

(3) 32"x48" Gypsum Board. In all areas 32"x48" gypsum board is subject to the minimum wallboard price except:

(a) Where used for specific roof jobs it is subject to the minimum plasterboard price for such specific jobs.

(b) In all States east of the Mississippi River and in the states of Iowa, Minnesota, Nebraska, Colorado, Missouri, Kansas, Oklahoma, Arkansas and Louisiana, 32"x48" board, if grey surfaced and round edged, is subject to minimum plasterboard price.

(4) 36"x48" Gypsum Board. 36"x48" is standard plasterboard size in all states for use on specific gypsum roof jobs only and is subject to minimum plasterboard price for such specific gypsum roof jobs.

(5) Sales to contractors and prefabricated house manufacturers, also extras on odd sizes:

(a) On sales of standard sizes to contractors, roofing contractors, metal ceiling contractors and prefabricated house manufacturers, add differentials per M sq. ft. as follows. (Note: Sales to roofing contractors are for specific roof jobs only):

To Contractors (Incl. Metal Ceiling Contrs.) and to Prefabricated House Mfrs. Std. Sizes		To Roofing Contractors Std. Sizes	
W. Bd.	Pl. Bd.	W. Bd.	Pl. Bd.
2.50	1.25	1.25	1.25

(b) On sales of odd sizes to dealers, contractors, roofing contractors, metal ceiling contractors and prefabricated house manufacturers, add differentials per M sq. ft. as follows. (Note: Sales to roofing contfactors are for specific roof jobs only):

To Dealers		To Contractors (Incl. Metal Ceiling Contrs.) & To Prefabricated House Mfrs.		To Roofing Contractors	
Odd Sizes		Odd Sizes		Odd Sizes	
W. Bd.	Pl. Bd.	W. Bd.	Pl. Bd.	W. Bd.	Pl. Bd.
2.50	1.25	5.00	2.50	1.25	1.25

Very truly yours,

UNITED STATES GYPSUM COMPANY,

Vice President.

† Indicates change in this reissue.

9979 UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

JULY 10, 1936.

Prices F.O.B. Trucks at Mills & Warehouses—Board License Bulletin No. 2—Cancels Bulletin No. 2 Dated June 24, 1936.

DEAR SIR: Referring to our license contract with you, you are hereby notified that effective July 13, 1936 the minimum prices at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent), including Haggerty patent number 1,500,452 and Hite patent number 1,230,297, are as follows:

Dealer Prices f.o.b. Trucks, Mills or Warehouses (Applying for standard sizes as listed in Bulletin No. 4)	1/4" Gypsum Wallboard (Wt. 950 # per M)	5/16" Gypsum Wallboard (Wt. 1175 # per M) (See Bul. No. 1 Note *)	3/8" Gypsum Wallboard (Wt. 1400 # per M)	1/2" Gypsum Wallboard (Wt. 1900 # per M)	1/2" Gypsum Sheathing (Wt. 1900 # per M)	3/4" Gypsum Wallboard (Wt. 3300 # per M)	3/8" Tiled Gypsum Wallbd. (Wt. 1400 # per M)	1/4" Gypsum Plasterboard (Wt. 950 # per M)	5/16" Gypsum Plasterboard (Wt. 1175 # per M)	3/8" Gypsum Plasterboard (Wt. 1400 # per M)	1/2" Gypsum Plasterboard (Wt. 1900 # per M)
Acme, Texas	23.00	— —	27.00	28.00	28.00	— —	52.00	17.00	— —	17.00	18.25
†*Boston & Portsmouth	23.50	— —	28.00	32.00	23.00	— —	51.00	16.00	— —	16.00	17.25
Cleveland	— —	— —	— —	— —	— —	— —	— —	— —	16.25	18.00	— —
Eldorado, Okla.	23.00	— —	27.00	28.00	28.00	— —	52.00	17.00	— —	17.00	18.25
Fort Dodge, Iowa	22.50	— —	28.50	31.00	22.00	36.50	50.00	15.00	— —	15.00	16.25
Grand Rapids, Mich.	24.50	— —	30.50	33.00	24.00	— —	52.00	17.00	— —	17.00	18.25
Gypsum, Ohio	24.50	28.50	30.50	33.00	24.00	38.50	52.00	17.00	— —	17.00	18.25
Laramie, Wyo.	24.25	— —	31.25	— —	— —	— —	56.25	— —	— —	21.25	— —
Loveland, Colo.	24.00	— —	31.00	39.00	— —	— —	56.00	— —	— —	21.00	— —
†*Metro N. Y.—N. J. Whses.	23.50	— —	29.50	32.00	23.00	— —	51.00	16.00	— —	16.00	17.25
Miami, Fla.	— —	— —	— —	— —	— —	— —	— —	— —	— —	23.12	— —
Milwaukee, Wis.	— —	— —	— —	— —	— —	— —	— —	— —	— —	17.57	— —
*Oakfield, N. Y.	24.50	28.50	30.50	33.00	24.00	38.50	52.00	17.00	— —	17.00	18.25
†*Philadelphia, Pa.	23.50	— —	29.50	32.00	23.00	— —	51.00	16.00	— —	16.00	17.25
†Plasterco, Va.	21.00	— —	27.00	32.00	23.00	— —	51.00	16.00	— —	16.00	17.25
Southard, Okla.	23.00	— —	27.00	28.00	28.00	38.50	52.00	17.00	— —	17.00	18.25
Sweetwater, Tex.	23.00	— —	27.00	28.00	28.00	— —	52.00	17.00	— —	17.00	18.25

* Minimum pickup 5000 sq. ft. patented gypsum board and/or lath products. Note: Any mixture of regular patented board (including special surfaced gypsum board products), and metallized patented board products may be combined to make up the 5000 feet minimum. Exception: 3/8" Tiled Gypsum Wallboard or special surfaced gypsum board products may be picked up in any quantity at Metro N. Y.—N. J. Warehouses.

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(1) 24″x48″ Cutstock Plasterboard: $19.50 per M sq. ft. for 1/4″ and 3/8″ thicknesses and $20.75 per M sq. ft. for 1/2″ thickness, f.o.b. trucks at Southard, Oklahoma.

(2) 1/4″ and 3/8″ Cutstock Plasterboard. Minimum price when picked up for destinations in Niagara, Erie, (including the town of Gowanda, New York) Monroe and Wayne Counties, N. Y.: 1/4″ and 3/8″ thicknesses $14.50 per M sq. ft. f.o.b. trucks at Oakfield, N. Y. This price does not apply to 32″x48″ board.

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(a) On sales of standard sizes to contractors, roofing contractors, metal ceiling contractors and prefabricated house manufacturers, add differentials per M sq. ft. as follows: (Note: Sales to roofing contractors are for specific roof jobs only):

To Contractors (Incl. Metal Ceiling Contra.) and to Prefabricated House Mfrs.		To Roofing Contractors	
Std. Sizes		Std. Sizes	
W. Bd.	Pl. Bd.	W. Bd.	Pl. Bd.
2.50	1.25	1.25	1.25

(b) On sales of odd sizes to dealers, contractors, roofing contractors, metal ceiling contractors and prefabricated house manufacturers, add differentials per M sq. ft. as follows. (Note: Sales to roofing contractors are for specific roof jobs only):

To Dealers		To Contractors (Incl. Metal Ceiling Contrs.) & To Prefabricated House Mfrs.		To Roofing Contractors	
Odd Sizes		Odd Sizes		Odd Sizes	
W. Bd.	Pl. Bd.	W. Bd.	Pl. Bd.	W. Bd.	Pl. Bd.
2.50	1.25	5.00	2.50	1.25	1.25

Very truly yours,

UNITED STATES GYPSUM COMPANY,

Vice President.

† Indicates change in this reissue.

9981 UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

JUNE 24, 1936.

Prices F.O.B. Trucks at Mills & Warehouses—Board License Bulletin No. 2—(Confirms telegram dated June 23, 1936)—Cancels Bulletin No. 2 Dated May 19, 1936.

DEAR SIR: Referring to our license contract with you, you are hereby notified that effective June 24, 1936 the minimum prices at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent), including Haggerty patent number 1,500,452 and Hite patent number 1,230,297, are as follows:

Dealer Prices f.o.b. Trucks, Mills or Warehouses (Applying for standard sizes as listed in Bulletin No. 4)	1/4" Gypsum Wallboard (Wt. 950# per M)	5/16" Gypsum Wallboard (Wt. 1175# per M) (See Bul. No. 1 Note *)	3/8" Gypsum Wallboard (Wt. 1400# per M)	1/2" Gypsum Wallboard (Wt. 1900# per M)	1/2" Gypsum Sheathing (Wt. 1900# per M)	3/4" Gypsum Wallboard (Wt. 3300# per M)	3/8" Tiled Gypsum Wallbd. (Wt. 1400# per M)	1/4" Gypsum Plasterboard (Wt. 950# per M)	5/16" Gypsum Plasterboard (Wt. 1175# per M)	3/8" Gypsum Plasterboard (Wt. 1400# per M)	1/2" Gypsum Plasterboard (Wt. 1900# per M)
Acme, Texas	23.00	— —	27.00	28.00	28.00	— —	52.00	17.00	— —	17.00	18.25
†*Boston & Portsmouth	24.50	— —	29.00	33.00	24.00	— —	52.00	17.00	— —	17.00	18.25
Cleveland	— —	— —	— —	— —	— —	— —	— —	— —	16.25	18.00	— —
Eldorado, Okla.	23.00	— —	27.00	28.00	28.00	— —	52.00	17.00	— —	17.00	18.25
Fort Dodge, Iowa	22.50	— —	28.50	31.00	22.00	36.50	50.00	15.00	— —	15.00	16.25
Grand Rapids, Mich.	24.50	— —	30.50	33.00	24.00	— —	52.00	17.00	— —	17.00	18.25
Gypsum, Ohio	24.50	28.50	30.50	33.00	24.00	38.50	52.00	17.00	— —	17.00	18.25
Laramie, Wyo.	24.25	— —	31.25	— —	— —	— —	56.25	— —	— —	21.25	— —
Loveland, Colo.	24.00	— —	31.00	39.00	— —	— —	56.00	— —	— —	21.00	— —
*Metro N. Y.—N. J. Whses.	24.50	— —	30.50	33.00	24.00	— —	52.00	17.00	— —	17.00	18.25
Miami, Fla.	— —	— —	— —	— —	— —	— —	— —	— —	— —	23.12	— —
Milwaukee, Wis.	— —	— —	— —	— —	— —	— —	— —	— —	— —	17.57	— —
*Oakfield, N. Y.	24.50	28.50	30.50	33.00	24.00	38.50	52.00	17.00	— —	17.00	18.25
*Philadelphia, Pa.	24.50	— —	30.50	33.00	24.00	— —	52.00	17.00	— —	17.00	18.25
Plasterco, Va.	23.50	— —	29.50	32.00	23.00	— —	51.00	16.00	— —	16.00	17.25
Southard, Okla.	23.00	— —	27.00	28.00	28.00	38.50	52.00	17.00	— —	17.00	18.25
Sweetwater, Tex.	23.00	— —	27.00	28.00	28.00	— —	52.00	17.00	— —	17.00	18.25

*. Minimum pickup 5000 sq. ft. patented gypsum board and/or lath products. Note: Any mixture of regular patented board (including special surfaced gypsum board products), and metallized patented board products may be combined to make up the 5000 ft. minimum. Exception: 3/8" Tiled Gypsum Wallboard or special surfaced gypsum board products may be picked up in any quantity at Metro N. Y.—N. J. Warehouses.

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(1) 24"x48" Cutstock Plasterboard: $19.50 per M sq. ft. for 1/4" and 3/8" thicknesses and $20.75 per M sq. ft. for 1/2". thickness, f.o.b. trucks at Southard, Oklahoma.

(2) 1/4" and 3/8" Cutstock Plasterboard. Minimum price when picked up for destinations in Niagara, Erie, (including the town of Gowanda, New York) Monroe and Wayne Counties, N. Y.: 1/4" and 3/8" thicknesses $14.50 per M sq. ft. f.o.b. trucks at Oakfield, N. Y. This price does not apply to 32"x48" board.

(3) 32" x 48" Gypsum Board. In all areas 32" x 48" gypsum board is subject to the minimum wallboard price except:

(a) Where used for specific roof jobs it is subject to the minimum plasterboard price for such specific jobs.

(b) In all states east of the Mississippi River and in the states of Iowa, Minnesota, Nebraska, Colorado, Missouri, Kansas, Oklahoma, Arkansas and Louisiana, 32" x 48" board, if grey surfaced and round edged, is subject to minimum plasterboard price.

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To Contractors (Incl. Metal Ceiling Contrs.) and to Prefabricated House Mfrs. Std. Sizes		To Roofing Contractors Std. Sizes	
W. Bd.	Pl. Bd.	W. Bd.	Pl. Bd.
2.50	1.25	1.25	1.25

(b) On sales of odd sizes to dealers, contractors, roofing contractors, metal ceiling contractors and prefabricated house manufacturers, add differentials per M sq. ft. as follows. (Note: Sales to roofing contractors are for specific roof jobs only):

To Dealers		To Contractors (Incl. Metal Ceiling Contrs.) & To Prefabricated House Mfrs.		To Roofing Contractors	
Odd Sizes		Odd Sizes		Odd Sizes	
W. Bd.	Pl. Bd.	W. Bd.	Pl. Bd.	W. Bd.	Pl. Bd.
2.50	1.25	5.00	2.50	1.25	1.25

Very truly yours,

UNITED STATES GYPSUM COMPANY

Vice President.

† Indicates change in this reissue.

9983 UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

MAY 19, 1936

Prices F.O.B. Trucks at Mills & Warehouses—Board License Bulletin No. 2—Cancels Bulletin No. 2 Dated May 4, 1936.

DEAR SIRS: Referring to our license contract with you, you are hereby notified that effective May 21, 1936 the minimum prices at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent), including Haggerty patent number 1,500,452 and Hite patent number 1,230,297, are as follows:

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Cleveland	— —	— —	— —	— —	— —	— —	— —	— —	16.25	18.00	— —
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Gypsum, Ohio	24.50	28.50	30.50	33.00	24.00	38.50	52.00	17.00	— —	17.00	18.25
†Laramie, Wyo.	24.25	— —	31.25	— —	— —	— —	56.25	— —	— —	21.25	— —
†Loveland, Colo.	24.00	— —	31.00	39.00	— —	— —	56.00	— —	— —	21.00	— —
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Miami, Fla.	— —	— —	— —	— —	— —	— —	— —	— —	— —	23.12	— —
Milwaukee, Wis.	— —	— —	— —	— —	— —	— —	— —	— —	— —	17.57	— —
*Oakfield, N. Y.	24.50	28.50	30.50	33.00	24.00	38.50	52.00	17.00	— —	17.00	18.25
†*Philadelphia, Pa.	24.50	— —	30.50	33.00	24.00	— —	52.00	17.00	— —	17.00	18.25
Plasterco, Va.	23.50	— —	29.50	32.00	23.00	— —	51.00	16.00	— —	16.00	17.25
Southard, Okla.	23.00	— —	27.00	28.00	28.00	38.50	52.00	17.00	— —	17.00	18.25
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W. Bd.	Pl. Bd.	W. Bd.	Pl. Bd.
2.50	1.25	1.25	1.25

(b) On sales of odd sizes to dealers, contractors, roofing contractors, metal ceiling contractors and perfabricated house manufacturers, add differentials per M sq. ft. as follows. (Note: Sales to roofing contractors are for specific roof jobs only):

To Dealers		To Contractors (Incl. Metal Ceiling Contrs.) & To Prefabricated House Mfrs.		To Roofing Contractors	
Odd Sizes		Odd Sizes		Odd Sizes	
W. Bd.	Pl. Bd.	W. Bd.	Pl. Bd.	W. Bd.	Pl. Bd.
2.50	1.25	5.00	2.50	1.25	1.25

Very truly yours,

UNITED STATES GYPSUM COMPANY

Vice President.

† Indicates change in this reissue.

9985 UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

MAY 4, 1936

Prices F.O.B. Trucks at Mills & Warehouses—Board License Bulletin No. 2—Cancels Bulletin No. 2 Dated March 14, 1936.

DEAR SIRS: Referring to our license contract with you, you are hereby notified that effective May 7, 1936 the minimum prices at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent), including Haggerty patent number 1,500,452 and Hite patent number 1,230,297, are as follows:

Dealer Prices f.o.b. Trucks, Mills or Warehouses (Applying for standard sizes as listed in Bulletin No. 4)	1/4" Gypsum Wallboard (Wt. 950# per M)	5/16" Gypsum Wallboard (Wt. 1175# per M) (See Bul. No. 1 Note *)	3/8" Gypsum Wallboard (Wt. 1400# per M)	1/2" Gypsum Wallboard (Wt. 1900# per M)	1/2" Gypsum Sheathing (Wt. 1900# per M)†	3/4" Gypsum Wallboard (Wt. 3300# per M)	3/8" Tiled Gypsum Wallbd. (Wt. 1400# per M)	1/4" Gypsum Plasterboard (Wt. 950# per M)	5/16" Gypsum Plasterboard (Wt. 1175# per M)	3/8" Gypsum Plasterboard (Wt. 1400# per M)	1/2" Gypsum Plasterboard (Wt. 1900# per M)
†Acme, Texas	24.50	—	27.00	28.00	28.00	—	52.00	17.00	—	17.00	18.25
†*Boston & Portsmouth	24.00	—	30.00	32.50	23.50	—	51.50	16.50	—	16.50	17.75
Cleveland	—	—	—	—	—	—	—	—	16.25	18.00	—
†Eldorado, Okla.	24.50	—	29.00	30.00	30.00	—	52.00	17.00	—	17.00	18.25
†Fort Dodge, Iowa	22.50	—	28.50	31.00	22.00	36.50	50.00	15.00	—	15.00	16.25
†Grand Rapids, Mich.	24.50	—	30.50	33.00	24.00	—	52.00	17.00	—	17.00	18.25
†Gypsum, Ohio	24.50	28.50	30.50	33.00	24.00	38.50	52.00	17.00	—	17.00	18.25
Laramie, Wyo.	26.75	—	34.75	—	—	—	56.25	—	—	21.25	—
Loveland, Colo.	26.50	—	34.50	39.00	—	—	56.00	—	—	21.00	—
†*Metro N. Y.—N. J. Whses.	24.00	—	30.00	32.50	23.50	—	51.50	16.50	—	16.50	17.75
Miami, Fla.	—	—	—	—	—	—	—	—	—	23.12	—
†Milwaukee, Wis.	—	—	—	—	—	—	—	—	—	17.57	—
†*Oakfield, N. Y.	24.50	28.50	30.50	33.00	24.00	38.50	52.00	17.00	—	17.00	18.25
†*Philadelphia, Pa.	24.00	—	30.00	32.50	23.50	—	51.50	16.50	—	16.50	17.75
†Plasterco, Va.	23.50	—	29.50	32.00	23.00	—	51.00	16.00	—	16.00	17.25
†Southard, Okla.	24.50	—	29.00	30.00	30.00	38.50	52.00	17.00	—	17.00	18.25
†Sweetwater, Tex.	24.50	—	27.00	28.00	28.00	—	52.00	17.00	—	17.00	18.25

* Minimum pickup 5000 sq. ft. patented gypsum board and/or lath products. Note: Any mixture of regular patented board (including special surfaced gypsum board products), and metallized patented board products may be combined to make up the 5000 ft. minimum. Exception: 3/8" Tiled Gypsum Wallboard or special surfaced gypsum board products may be picked up in any quantity at Metro N. Y.—N. J. Warehouses.

9986 The above prices apply to all pickups of all board embodying the claims of our patents in all markets except where an exceptions is made as follows:

(1) 24" x 48" Cutstock Plasterboard: $19.50 per M sq. ft. for 1/4" and 3/8" thicknesses and $20.75 per M sq. ft. for 1/2" thickness, f.o.b. trucks at Southard, Oklahoma.

(2) 1/4" and 3/8" Cutstock Plasterboard. Minimum price when picked up for destinations in Niagara, Erie, (including the town of Gowanda, New York) Monroe and Wayne Counties, N. Y.: 1/4" and 3/8" thicknesses $14.50 per M sq. ft. f.o.b. trucks at Oakfield, N. Y. This price does not apply to 32" x 48" board.

(3) 32" x 48" Gypsum Board. In all areas 32" x 48" gypsum board is subject to the minimum wallboard price except:

(a) Where used for specific roof jobs it is subject to the minimum plasterboard price for such specific jobs.

(b) In all states east of the Mississippi River and in the states of Iowa, Minnesota, Nebraska, Colorado, Missouri, Kansas, Oklahoma, Arkansas and Louisiana, 32" x 48" board, if grey surfaced and round edged, is subject to minimum plasterboard price.

(4) 36" x 48" Gypsum Board. 36" x 48" is standard plasterboard size in all states for use on specific gypsum roof jobs only and is subject to minimum plasterboard price for such specific gypsum roof jobs.

(5) Sales to contractors and prefabricated house manufacturers, also extras on odd sizes:

(a) On sales of standard sizes to contractors, roofing contractors, metal ceiling contractors and prefabricated house manufacturers, add differentials per M sq. ft. as follows. (Note: Sales to roofing contractors are for specific roof jobs only):

To Contractors (Incl. Metal Ceiling Contrs.) and to Prefabricated House Mfrs.		To Roofing Contractors	
Std. Sizes		Std. Sizes	
W. Bd.	Pl. Bd.	W. Bd.	Pl. Bd.
2.50	1.25	1.25	1.25

(b) On sales of odd sizes to dealers, contractors, roofing contractors, metal ceiling contractors and prefabricated house manufacturers, add differentials per M sq. ft. as follows. (Note: Sales to roofing contractors are for specific roof jobs only):

To Dealers		To Contractors (Incl. Metal Ceiling Contrs.) & To Prefabricated House Mfrs.		To Roofing Contractors	
Odd Sizes		Odd Sizes		Odd Sizes	
W. Bd.	Pl. Bd.	W. Bd.	Pl. Bd.	W. Bd.	Pl. Bd.
2.50	1.25	5.00	2.50	1.25	1.25

Very truly yours,

UNITED STATES GYPSUM COMPANY

Vice President.

† Indicates change in this reissue.

9987

UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

MARCH 14, 1936.

Prices F.O.B. Trucks at Mills & Warehouses—Board License Bulletin No. 2—Cancels Bulletin No. 2 Dated February 22, 1936

DEAR SIRS: Referring to our license contract with you, you are hereby notified that effective March 16, 1936 the minimum prices at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent), including Haggerty patent number 1,500,452 and Hite patent number 1,230,297, are as follows:

Dealer Prices f.o.b. Trucks Mills or Warehouses (Applying for standard sizes as listed in Bulletin No. 4)	1/4" Gypsum Wallboard (Wt. 950# per M)	5/16" Gypsum Wallboard (Wt. 1175# per M) (See Bul. No. 1 Note *)	3/8" Gypsum Wallboard (Wt. 1400# per M)	1/2" Gypsum Wallboard (Wt. 1900# per M)	3/4" Gypsum Wallboard (Wt. 3300# per M)	3/8" Tiled Gypsum Wallbd. (Wt. 1400# per M)	1/4" Gypsum Plasterboard (Wt. 950# per M)	5/16" Gypsum Plasterboard (Wt. 1175# per M)	3/8" Gypsum Plasterboard (Wt. 1400# per M)	1/2" Gypsum Plasterboard (Wt. 1900# per M)
Acme, Texas	24.50	— —	27.00	28.00	— —	52.00	17.00	— —	17.00	18.25
*Boston & Portsmouth.	27.07	— —	34.28	38.13	— —	55.78	19.57	— —	20.78	23.38
Cleveland	— —	— —	— —	— —	— —	— —	— —	16.25	18.00	— —
Eldorado, Okla.	24.50	— —	29.00	30.00	— —	52.00	17.00	— —	17.00	18.25
Fort Dodge, Iowa	22.50	— —	28.50	31.00	36.50	50.00	15.00	— —	15.00	16.25
Grand Rapids, Mich.	24.50	— —	30.50	33.00	— —	52.00	17.00	— —	17.00	18.25
Gypsum, Ohio	24.50	28.50	30.50	33.00	38.50	52.00	17.00	— —	17.00	18.25
Laramie, Wyo.	26.75	— —	34.75	— —	— —	56.25	— —	— —	21.25	— —
Loveland, Colo.	26.50	— —	34.50	39.00	— —	56.00	— —	— —	21.00	— —
*Metro. N. Y.–N. J. Whses.	24.50	— —	31.44	34.99	— —	52.94	17.00	— —	17.94	20.24
Miami, Fla.	— —	— —	— —	— —	— —	— —	— —	— —	23.12	— —
Milwaukee, Wis.	— —	— —	— —	— —	— —	— —	— —	— —	17.71	— —
*Oakfield, N. Y.	24.50	28.50	30.50	33.00	38.50	52.00	17.00	— —	17.00	18.25
*Philadelphia, Pa.	24.50	— —	31.44	34.99	— —	52.94	17.00	— —	17.94	20.24
Plasterco, Va.	23.50	— —	29.50	32.00	— —	51.00	16.00	— —	16.00	17.25
Southard, Okla.	24.50	— —	29.00	30.00	38.50	52.00	17.00	— —	17.00	18.25
Sweetwater, Tex.	24.50	— —	27.00	28.00	— —	52.00	17.00	— —	17.00	18.25

*†Minimum pickup 5000 sq. ft. patented gypsum board and/or lath products. Note: Any mixture of regular patented board (including special surfaced gypsum board products), and metallized patented board products may be combined to make up the 5000 ft. minimum. Exception 3/8" Tiled Gypsum Wallboard or special surfaced gypsum board products may be picked up in any quantity at Metro N. Y.—N. J. Warehouses.

9988 The above prices apply to all pickups of all board embodying the claims of our patents in all markets except where an exception is made as follows:

(1) 24″ x 48″ Cutstock Plasterboard: $19.50 per M sq. ft. for 1/4″ and 3/8″ thicknesses and $20.75 per M sq. ft. for 1/2″ thickness, f.o.b. trucks at Southard, Oklahoma.

(2) 32″ x 48″ Gypsum Board. In all areas 32″ x 48″ gypsum board is subject to the minimum wallboard price except:

(a) Where used for specific roof jobs it is subject to the minimum plasterboard price for such specific jobs.

(b) In all states east of the Mississippi River and in the states of Iowa Minnesota, Nebraska, Colorado, Missouri, Kansas, Oklahoma, Arkansas and Louisiana, 32″ x 48″ board, if grey surfaced and round edged, is subject to minimum plasterboard price.

(3) 36″ x 48″ Gypsum Board. 36″ x 48″ is standard plasterboard size in all states for use on specific gypsum roof jobs only and is subject to minimum plasterboard price for such specific gypsum roof jobs.

(4) Minimum Price Cutstock Plasterboard picked up for destinations Niagara, Erie, (including the town of Gowanda, New York) Monroe and Wayne Counties, N. Y.: 1/4″ and 3/8″ thicknesses $14.50 per M sq. ft. f.o.b. trucks at Oakfield, N. Y. This price does not apply to 32″ x 48″ board. See paragraph (2).

(5) Sales to contractors and prefabricated house manufacturers, also extras on odd sizes:

On odd sizes and on sales to contractors, roofing contractors, metal ceiling contractors and prefabricated house manufacturers, add differentials per M sq. ft. as follows. (Note: Sales to roofing contractors are for specific roof jobs only):

To Dealers				To Contractors (Incl. Metal Ceiling Contrs.) & to Prefabricated House Mfrs.				To Roofing Contractors			
Std. Sizes		Odd Sizes		Std. Sizes		Odd Sizes		Std. Sizes		Odd Sizes	
W. Bd.	Pl. Bd.	W. Bd.	Pl. Bd.	W. Bd.	Pl. Bd.	W. Bd.	Pl. Bd.	W. Bd.	Pl. Bd.	W. Bd.	Pl. Bd.
—	—	2.50	1.25	2.50	1.25	5.00	2.50	1.25	1.25	1.25	1.25

Very truly yours,

UNITED STATES GYPSUM COMPANY

Vice President.

† Indicates change in this reissue.

4954

9989

UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

FEBRUARY 22, 1936

Prices F.O.B. Trucks at Mills & Warehouses—Board License Bulletin No. 2—Cancels Bulletin No. 2 Dated February 12, 1936

DEAR SIRS: Referring to our license contract with you, you are hereby notified that effective February 24, 1936 the minimum prices at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent), including Haggerty patent number 1,500,452 and Hite patent number 1,230,297, are as follows:

Dealer Prices f.o.b. Trucks Mills or Warehouses (Applying for standard sizes as listed in Bulletin No. 4)	1/4" Gypsum Wallboard (Wt. 950# per M)	5/16" Gypsum Wallboard (Wt. 1175# per M) (See Bul. No. 1 Note *)	3/8" Gypsum Wallboard (Wt. 1400# per M)	1/2" Gypsum Wallboard (Wt. 1900# per M)	3/4" Gypsum Wallboard (Wt. 3300# per M)	3/8" Tiled Gypsum Wallbd. (Wt. 1400# per M)	1/4" Gypsum Plasterboard (Wt. 950# per M)	5/16" Gypsum Plasterboard (Wt. 1175# per M)	3/8" Gypsum Plasterboard (Wt. 1400# per M)	1/2" Gypsum Plasterboard (Wt. 1900# per M)
Acme, Texas	24.50	— —	27.00	28.00	— —	52.00	17.00	— —	17.00	18.25
*Boston & Portsmouth.	27.07	— —	34.28	38.13	— —	55.78	19.57	— —	20.78	23.38
Cleveland, Ohio	— —	— —	— —	— —	— —	— —	— —	16.25	18.00	— —
†Eldorado, Okla.	24.50	— —	29.00	30.00	— —	52.00	17.00	— —	17.00	18.25
Fort Dodge, Iowa	22.50	— —	28.50	31.00	36.50	50.00	15.00	— —	15.00	16.25
Grand Rapids, Mich.	24.50	— —	30.50	33.00	— —	52.00	17.00	— —	17.00	18.25
Gypsum, Ohio	24.50	28.50	30.50	33.00	38.50	52.00	17.00	— —	17.00	18.25
Laramie, Wyo.	26.75	— —	34.75	— —	— —	56.25	— —	— —	21.25	— —
Loveland, Colo.	26.50	— —	34.50	39.00	— —	56.00	— —	— —	21.00	— —
*Metro. N. Y.–N. J. Whses.	24.50	— —	31.44	34.99	— —	52.94	17.00	— —	17.94	20.24
Miami, Fla.	— —	— —	— —	— —	— —	— —	— —	— —	23.12	— —
Milwaukee, Wisc.	— —	— —	— —	— —	— —	— —	— —	— —	17.71	— —
*Oakfield, N. Y.	24.50	28.50	30.50	33.00	38.50	52.00	17.00	— —	17.00	18.25
*Philadelphia, Pa.	24.50	— —	31.44	34.99	— —	52.94	17.00	— —	17.94	20.24
Plasterco, Va.	23.50	— —	29.50	32.00	— —	51.00	16.00	— —	16.00	17.25
†Southard, Okla.	24.50	— —	29.00	30.00	38.50	52.00	17.00	— —	17.00	18.25
Sweetwater, Tex.	24.50	— —	27.00	28.00	— —	52.00	17.00	— —	17.00	18.25

*† Minimum pickup 5000 sq. ft. patented gypsum board and/or lath products. Note: Any mixture of regular and metallized patented board products may be combined to make up the 5000 ft. minimum. Exception: 3/8" Tiled Gypsum Wallboard may be picked up in any quantity at Metro N. Y.—N. J. Warehouses.

9990 The above prices apply to all pickups of all board embodying the claims of our patents in all markets except where an exception is made as follows:

(1) 24" x 48" Cutstock Plasterboard: $19.50 per M sq. ft. for 1/4" and 3/8" thicknesses and $20.75 per M sq. ft. for 1/2" thickness, f.o.b. trucks at Southard, Oklahoma.

(2) 32" x 48" Gypsum Board. In all areas 32" x 48" gypsum board is subject to the minimum wallboard price except:

(a) Where used for specific roof jobs it is subject to the minimum plasterboard price for such specific jobs.

(b) In all states east of the Mississippi River and in the states of Iowa, Minnesota, Nebraska, Colorado, Missouri, Kansas, Oklahoma, Arkansas and Louisiana, 32" x 48" board, if grey surfaced and round edged, is subject to minimum plasterboard price.

(3) 36" x 48" Gypsum Board. 36" x 48" is standard plasterboard size in all states for use on specific gypsum roof jobs only and is subject to minimum plasterboard price for such specific gypsum roof jobs.

(4) Minimum Price Cutstock Plasterboard picked up for destinations in Niagara, Erie, (including the town of Gowanda, New York) Monroe and Wayne Counties, N. Y.: 1/4" and 3/8" thicknesses $14.50 per M sq. ft. f.o.b. trucks at Oakfield, N. Y. This price does not apply to 32" x 48" board. See paragraph (2).

(5) Refer to Board License Bulletin No. 1 for differentials applicable on odd sizes and on sales to contractors, roofing contractors, metal ceiling contractors and Prefabricated House Manufacturers. (Note: Sales to roofing contractors are for specific roof jobs only.)

Very truly yours,

UNITED STATES GYPSUM COMPANY

Vice President.

† Indicates change in this reissue.

4956

9991

UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

FEBRUARY 12, 1936

Prices F.O.B. Trucks at Mills & Warehouses—Board License Bulletin No. 2—Cancels Bulletin No. 2 Dated February 6, 1936

DEAR SIRS: Referring to our license contract with you, you are hereby notified that effective February 15, 1936 the minimum prices at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent), including Haggerty patent number 1,500,452 and Hite patent number 1,230,297, are as follows:

Dealer Prices f.o.b. Trucks Mills or Warehouses (Applying for standard sizes as listed in Bulletin No. 4)	1/4" Gypsum Wallboard (Wt. 950# per M)	5/16" Gypsum Wallboard (Wt. 1175# per M) (See Bul. No. 1 Note *)	3/8" Gypsum Wallboard (Wt. 1400# per M)	1/2" Gypsum Wallboard (Wt. 1900# per M)	3/4" Gypsum Wallboard (Wt. 3300# per M)	3/8" Tiled Gypsum Wallbd. (Wt. 1400# per M)	1/4" Gypsum Plasterboard (Wt. 950# per M)	5/16" Gypsum Plasterboard (Wt. 1175# per M)	3/8" Gypsum Plasterboard (Wt. 1400# per M)	1/2" Gypsum Plasterboard (Wt. 1900# per M)
Acme, Texas	24.50x	— —	27.00x	28.00	— —	52.00	17.00	— —	17.00x	18.25
*Boston & Portsmouth.	27.07	— —	34.28	38.13	— —	55.78	19.57	— —	20.78	23.38
Cleveland, Ohio	— —	— —	— —	— —	— —	— —	— —	16.25	18.00	— —
Fort Dodge, Iowa	22.50	— —	28.50	31.00	36.50	50.00	15.00	— —	15.00	16.25
Grand Rapids, Mich.	24.50	— —	30.50	33.00	— —	52.00	17.00	— —	17.00	18.25
Gypsum, Ohio	24.50	28.50	30.50	33.00	38.50	52.00	17.00	— —	17.00	18.25
Laramie, Wyo.	26.75	— —	34.75	— —	— —	56.25	— —	— —	21.25	— —
Loveland, Colo.	26.50	— —	34.50	39.00	— —	56.00	— —	— —	21.00	— —
*Metro. N. Y.–N. J. Whses.	24.50	— —	31.44	34.99	— —	52.94	17.00	— —	17.94	20.24
Miami, Fla.	— —	— —	— —	— —	— —	— —	— —	— —	23.12	— —
†Milwaukee, Wisc.	— —	— —	— —	— —	— —	— —	— —	— —	17.71	— —
*Oakfield, N. Y.	24.50	28.50	30.50	33.00	38.50	52.00	17.00	— —	17.00	18.25
*Philadelphia, Pa.	24.50	— —	31.44	34.99	— —	52.94	17.00	— —	17.94	20.24
Plasterco, Va.	23.50	— —	29.50	32.00	— —	51.00	16.00	— —	16.00	17.25
Southard, Okla.	24.50	— —	30.50	31.50	38.50	52.00	17.00	— —	17.00	18.25
Sweetwater, Tex.	24.50	— —	27.00	28.00	— —	52.00	17.00	— —	17.00	18.25

* Minimum pickup 5000 sq. ft. patented gypsum board and/or lath products. Note: Any mixture of regular and metallized patented board products may be combined to make up the 5000 ft. minimum.

x Price also applies pickups only at Eldorado, Okla.

9992 The above price apply to all pickups of all board embodying the claims of our patents in all markets except where an exception is made as follows:

(1) 24" x 48" Cutstock Plasterboard: $19.50 per M sq. ft. for 1/4" and 3/8" thicknesses and $20.75 per M sq. ft. for 1/2" thickness, f.o.b. trucks at Southard, Oklahoma.

(2) 32" x 48" Gypsum Board. In all areas 32" x 48" gypsum board is subject to the minimum wallboard price except:

(a) Where used for specific roof jobs it is subject to the minimum plasterboard price for such specific jobs.

(b) In all states east of the Mississippi River and in the states of Iowa, Minnesota, Nebraska, Colorado, Missouri, Kansas, Oklahoma, Arkansas and Louisiana, 32" x 48" board, if grey surfaced and round edged, is subject to minimum plasterboard price.

(3) 36" x 48" Gypsum Board. 36" x 48" is standard plasterboard size in all states for use on specific gypsum roof jobs only and is subject to minimum plasterboard price for such specific gypsum roof jobs.

(4) Minimum Price Cutstock Plasterboard picked up for destinations in Niagara, Erie, (including the town of Gowanda, New York) Monroe and Wayne Counties, N. Y.: 1/4" and 3/8" thicknesses $14.50 per M sq. ft. f.o.b. trucks at Oakfield, N. Y. This price does not apply to 32" x 48" board. See paragraph (2).

(5) Refer to Board License Bulletin No. 1 for differentials applicable on odd sizes and on sales to contractors, roofing contractors, metal ceiling contractors and Prefabricated House Manufacturers. (Note: Sales to roofing contractors are for specific roof jobs only.)

Very truly yours,

UNITED STATES GYPSUM COMPANY

Vice President.

† Indicates change in this reissue.

9993 UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

FEBRUARY 6, 1936

Prices F.O.B. Trucks at Mills & Warehouses—Board License Bulletin No. 2—Cancels Bulletin No. 2 Dated December 2, 1935.

DEAR SIRS: Referring to our license contract with you, you are hereby notified that effective February 7, 1936 the minimum prices at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent), including Haggerty patent number 1,500,452 and Hite patent number 1,230,297, are as follows:

Dealer Prices f.o.b. Trucks Mills or Warehouses (Applying for standard sizes as listed in Bulletin No. 4)	1/4" Gypsum Wallboard (Wt. 950 # per M)	5/16" Gypsum Wallboard (Wt. 1175 # per M) (See Bul. No. 1 Note *)	3/8" Gypsum Wallboard (Wt. 1400 # per M)	1/2" Gypsum Wallboard (Wt. 1900 # per M)	3/4" Gypsum Wallboard (Wt. 3300 # per M)	3/8" Tiled Gypsum Wallbd. (Wt. 1400 # per M)	1/4" Gypsum Plasterboard (Wt. 950 # per M)	5/16" Gypsum Plasterboard (Wt. 1175 # per M)	3/8" Gypsum Plasterboard (Wt. 1400 # per M)	1/2" Gypsum Plasterboard (Wt. 1900 # per M)
Acme, Texas	24.50x	— —	27.00x	28.00	— —	52.00	17.00	— —	17.00x	18.25
*Boston & Portsmouth	27.07	— —	34.28	38.13	— —	55.78	19.57	— —	20.78	23.38
Cleveland, Ohio	— —	— —	— —	— —	— —	— —	— —	16.25	18.00	— —
Fort Dodge, Iowa	22.50	— —	28.50	31.00	36.50	50.00	15.00	— —	15.00	16.25
Grand Rapids, Mich.	24.50	— —	30.50	33.00	— —	52.00	17.00	— —	17.00	18.25
Gypsum, Ohio	24.50	28.50	30.50	33.00	38.50	52.00	17.00	— —	17.00	18.25
Laramie, Wyo.	26.75	— —	34.75	— —	— —	56.25	— —	— —	21.25	— —
Loveland, Colo.	26.50	— —	34.50	39.00	— —	56.00	— —	— —	21.00	— —
*Metro. N. Y.-N. J. Whses.	24.50	— —	31.44	34.99	— —	52.94	17.00	— —	17.94	20.24
Miami, Fla.	— —	— —	— —	— —	— —	— —	— —	— —	23.12	— —
*Oakfield, N. Y.	24.50	28.50	30.50	33.00	38.50	52.00	17.00	— —	17.00	18.25
*Philadelphia, Pa.	24.50	— —	31.44	34.99	— —	52.94	17.00	— —	17.94	20.24
Plasteteo, Va.	23.50	— —	29.50	32.00	— —	51.00	16.00	— —	16.00	17.25
Southard, Okla.	24.50	— —	30.50	31.50	38.50	52.00	17.00	— —	17.00	18.25
Sweetwater, Tex.	24.50	— —	27.00	28.00	— —	52.00	17.00	— —	17.00	18.25

* Minimum pickup 5000 sq. ft. patented gypsum board and/or lath products. Note: Any mixture of regular and metallized patented board products may be combined to make up the 5000 ft. minimum.

x. Price also applies pickups only at Eldorado, Okla.

9994 The above prices apply to the sale of all board embodying the claims of our patents in all markets except where an exception is made as follows:

(1) 24″ x 48″ Cutstock Plasterboard: $19.50 per M sq. ft. for 1/4″ and 3/8″ thicknesses and $20.75 per M sq. ft. for 1/2″ thickness, f.o.b. trucks at Southard, Oklahoma.

(2) 32″ x 48″ Gypsum Board. In all areas 32″ x 48″ gypsum board is subject to the minimum wallboard price except:

(a) Where used for specific roof jobs it is subject to the minimum plasterboard price for such specific jobs.

(b) In all states east of the Mississippi River and in the states of Iowa, Minnesota, Nebraska, Colorado, Missouri, Kansas, Oklahoma, Arkansas and Louisiana, 32″ x 48″ board, if grey surfaced and round edged, is subject to minimum plasterboard price.

(3) 36″ x 48″ Gypsum Board. 36″ x 48″ is standard plasterboard size in all states for use on specific gypsum roof jobs only and is subject to minimum plasterboard price for such specific gypsum roof jobs.

(4) Minimum Price Cutstock Plasterboard picked up for destinations in Niagara, Erie (including the town of Gowanda, New York) Monroe and Wayne Counties, N. Y.: 1/4″ and 3/8″ thicknesses $14.50 per M sq. ft. f.o.b. trucks at Oakfield, N. Y. This price does not apply to 32″ x 48″ board. See paragraph (2).

(5) Refer to Board License Bulletin No. 1 for differentials applicable on odd sizes and on sales to contractors, roofing contractors and metal ceiling contractors. (Note: Sales to roofing contractors are for specific roof jobs only.)

Very truly yours,

UNITED STATES GYPSUM COMPANY

Vice President.

† Indicates change in this reissue.

9995 UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

DECEMBER 2, 1935

Prices F.O.B. Trucks at Mills & Warehouses—Board License Bulletin No. 2—Cancels Bulletin No. 2 Dated November 13, 1935

DEAR SIRS: Referring to our license contract with you, you are hereby notified that effective immediately the minimum prices at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent), including Haggerty patent number 1,500,452 and Hite patent number 1,230,297, are as follows:

Dealer Prices f.o.b. Trucks Mills or Warehouses (Applying for standard sizes as listed in Bulletin No. 4)	1/4" Gypsum Wallboard (Wt. 950# per M)	5/16" Gypsum Wallboard (Wt. 1175# per M) (See Bul. No. 1 Note *)	3/8" Gypsum Wallboard (Wt. 1400# per M)	1/2" Gypsum Wallboard (Wt. 1900# per M)	3/4" Gypsum Wallboard (Wt. 3300# per M)	3/8" Tiled Gypsum Wallbd. (Wt. 1400# per M)	1/4" Gypsum Plasterboard (Wt. 950# per M)	5/16" Gypsum Plasterboard (Wt. 1175# per M) †	3/8" Gypsum Plasterboard (Wt. 1400# per M)	1/2" Gypsum Plasterboard (Wt. 1900# per M)
Acme, Texas	24.50x	— —	27.00x	28.00	— —	52.00	17.00	— —	17.00x	18.25
*Boston & Portsmouth	27.07	— —	34.28	38.13	— —	55.78	19.57	— —	20.78	23.38
†Cleveland, Ohio	— —	— —	— —	— —	— —	— —	— —	16.25	18.00	— —
Fort Dodge, Iowa	22.50	— —	28.50	31.00	36.50	50.00	15.00	— —	15.00	16.25
Grand Rapids, Mich.	24.50	— —	30.50	33.00	— —	52.00	17.00	— —	17.00	18.25
Gypsum, Ohio	24.50	28.50	30.50	33.00	38.50	52.00	17.00	— —	17.00	18.25
Laramie, Wyo.	26.75	— —	34.75	— —	— —	56.25	— —	— —	21.25	— —
Loveland, Colo.	26.50	— —	34.50	39.00	— —	56.00	— —	— —	21.00	— —
*Metro. N. Y.–N. J. Whses.	24.50	— —	31.44	34.99	— —	52.94	17.00	— —	17.94	20.24
Miami, Fla.	— —	— —	— —	— —	— —	— —	— —	— —	23.12	— —
*Oakfield, N. Y.	24.50	28.50	30.50	33.00	38.50	52.00	17.00	— —	17.00	18.25
*Philadelphia, Pa.	26.50	— —	33.44	36.99	— —	54.94	19.00	— —	19.94	22.24
Plasterco, Va.	23.50	— —	29.50	32.00	— —	51.00	16.00	— —	16.00	17.25
Southard, Okla.	24.50	— —	30.50	33.50	38.50	52.00	17.00	— —	17.00	18.25
Sweetwater, Tex.	24.50	— —	27.00	28.00	— —	52.00	17.00	— —	17.00	18.25

* Minimum pickup 5000 sq. ft. patented gypsum board and/or lath products. Note: Any mixture of regular and metallized patented board products may be combined to make up the 5000 ft. minimum.

x Price also applies pickups only at Eldorado, Okla.

9996 The above prices apply to the sale of all board embodying the claims of our patents in all markets except where an exception is made as follows:

(1) 24" x 48" Cutstock Plasterboard: $19.50 per M sq. ft. for 1/4" and 3/8" thicknesses and $20.75 per M sq. ft. for 1/2" thickness, f.o.b. trucks at Southard, Oklahoma.

(2) 32" x 48" Gypsum Board. In all areas 32" x 48" gypsum board is subject to the minimum wallboard price except:

(a) Where used for specific roof jobs it is subject to the minimum plasterboard price for such specific jobs.

†(b) In all states east of the Mississippi River and in the states of Iowa, Minnesota, Nebraska, Colorado, Missouri, Kansas, Oklahoma, Arkansas and Louisiana, 32" x 48" board, if grey surfaced and round edged, is subject to minimum plasterboard price.

(3) 36" x 48" Gypsum Board. 36" x 48" is standard plasterboard size in all states for use on specific gypsum roof jobs only and is subject to minimum plasterboard price for such specific gypsum roof jobs.

(4) Minimum Price Cutstock Plasterboard picked up for destinations in Niagara, Erie (including the town of Gowanda, New York) Monroe and Wayne Counties, N. Y.: 1/4" and 3/8" thicknesses $14.50 per M sq. ft. f.o.b. trucks at Oakfield, N. Y. This price does not apply to 32" x 48" board. See paragraph (2).

(5) Refer to Board License Bulletin No. 1 for differentials applicable on odd sizes and on sales to contractors, roofing contractors and metal ceiling contractors. (Note: Sales to roofing contractors are for specific roof jobs only.)

Very truly yours,

UNITED STATES GYPSUM COMPANY,

Vice President.

† Indicates change in this reissue.

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9997

UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

NOVEMBER 13, 1935

Prices F.O.B. Trucks at Mills & Warehouses—Board License Bulletin No. 2—Cancels Bulletin No. 2 Dated October 23, 1935

DEAR SIRS: Referring to our license contract with you, you are hereby notified that effective November 15, 1935 the minimum prices at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent), including Haggerty patent number 1,500,452 and Hite patent number 1,230,297, are as follows:

Dealer Prices f.o.b. Trucks Mills or Warehouses (Applying for standard sizes as listed in Bulletin No. 4)	1/4" Gypsum Wallboard (Wt. 950 # per M)	5/16" Gypsum Wallboard (Wt. 1175 # per M) (See Bul. No. 1 Note *)	3/8" Gypsum Wallboard (Wt. 1400 # per M)	1/2" Gypsum Wallboard (Wt. 1900 # per M)	3/4" Gypsum Wallboard (Wt. 3300 # per M)	3/8" Tiled Gypsum Wallbd. (Wt. 1400 # per M)	1/4" Gypsum Plasterboard (Wt. 950 # per M)	3/8" Gypsum Plasterboard (Wt. 1400 # per M)	1/2" Gypsum Plasterboard (Wt. 1900 # per M)
Acme, Texas	24.50x	— —	27.00x	28.00	— —	52.00	17.00	17.00x	18.25
*Boston & Portsmouth	27.07	— —	34.28	38.13	— —	55.78	19.57	20.78	23.38
Cleveland, Ohio	— —	— —	— —	— —	— —	— —	— —	18.00	— —
Fort Dodge, Iowa	22.50	— —	28.50	31.00	36.50	50.00	15.00	15.00	16.25
Grand Rapids, Mich.	24.50	— —	30.50	33.00	— —	52.00	17.00	17.00	18.25
Gypsum, Ohio	24.50	28.50	30.50	33.00	38.50	52.00	17.00	17.00	18.25
Laramie, Wyo.	26.75	— —	34.75	— —	— —	56.25	— —	21.25	— —
Loveland, Colo.	26.50	— —	34.50	39.00	— —	56.00	— —	21.00	— —
*Metro N. Y.—N. J. Whses.	24.50	— —	31.44	34.99	— —	52.94	17.00	17.94	20.24
†Miami, Fla.	— —	— —	— —	— —	— —	— —	— —	23.12	— —
*Oakfield, N. Y.	24.50	28.50	30.50	33.00	38.50	52.00	17.00	17.00	18.25
*Philadelphia, Pa.	26.50	— —	33.44	36.99	— —	54.94	19.00	19.94	22.24
Plastereo, Va.	23.50	— —	29.50	32.00	— —	51.00	16.00	16.00	17.25
Southard, Okla.	24.50	— —	30.50	31.50	38.50	52.00	17.00	17.00	18.25
Sweetwater, Tex.	24.50	— —	27.00	28.00	— —	52.00	17.00	17.00	18.25

* Minimum pickup 5000 sq. ft. patented gypsum board and/or lath products. Note: Any mixture of regular and metallized patented board products may be combined to make up the 5000 ft. minimum.

x Price also applies pickups only at Eldorado, Okla.

9998 The above prices apply to the sale of all board embodying the claims of our patents in all markets except where an exception is made as follows:

(1) 24″ x 48″ Cutstock Plasterboard: $19.50 per M sq. ft. for 1/4″ and 3/8″ thicknesses and $20.75 per M sq. ft. for 1/2″ thickness, f.o.b. trucks at Southard, Oklahoma.

(2) 32″ x 48″ Gypsum Board. In all areas 32″ x 48″ gypsum board is subject to the minimum wallboard price except:

(a) Where used for specific roof jobs it is subject to the minimum plasterboard price for such specific jobs.

(b) In all states east of the Mississippi River and in the states of Missouri, Kansas, Oklahoma, Arkansas and Louisiana, 32″ x 48″ board, if grey surfaced and round edged, is subject to minimum plasterboard price.

(3) 36″ x 48″ Gypsum Board. 36″ x 48″ is standard plasterboard size in all states for use on specific gypsum roof jobs only and is subject to minimum plasterboard price for such specific gypsum roof jobs.

(4) Minimum Price Cutstock Plasterboard picked up for destinations in Niagara, Erie (including the town of Gowanda, New York) Monroe and Wayne Counties, N. Y.: 1/4″ and 3/8″ thicknesses $14.50 per M sq. ft. f.o.b. trucks at Oakfield, N. Y. This price does not apply to 32″ x 48″ board. See paragraph (2).

(5) Refer to Board License Bulletin No. 1 for differentials applicable on odd sizes and on sales to contractors, roofing contractors and metal ceiling contractors. (Note: Sales to roofing contractors are for specific roof jobs only.)

Very truly yours,

UNITED STATES GYPSUM COMPANY

Vice President.

† Indicates change in this reissue.

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9999 UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

OCTOBER 23, 1935

Prices F.O.B. Trucks at Mills & Warehouses—Board License Bulletin No. 2—Cancels Bulletin No. 2 Dated September 17, 1935

DEAR SIRS: Referring to our license contract with you, you are hereby notified that effective October 24, 1935 the minimum prices at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent), including Haggerty patent number 1,500,452 and Hite patent number 1,230,297, are as follows:

Dealer Prices f.o.b. Trucks Mills or Warehouses (Applying for standard sizes as listed in Bulletin No. 4)	1/4" Gypsum Wallboard (Wt. 950 # per M)	5/16" Gypsum Wallboard (Wt. 1175 # per M) (See Bul. No. 1 Note *)	3/8" Gypsum Wallboard (Wt. 1400 # per M)	1/2" Gypsum Wallboard (Wt. 1900 # per M)	3/4" Gypsum Wallboard, (Wt. 3300 # per M)	3/8" Tiled Gypsum Wallbd. (Wt. 1400 # per M)	1/4" Gypsum Plasterboard (Wt. 950 # per M)	3/8" Gypsum Plasterboard (Wt. 1400 # per M)	1/2" Gypsum Plasterboard (Wt. 1900 # per M)
†Acme, Texas	24.50x	— —	27.00x	28.00	— —	52.00	17.00	17.00x	18.25
*Boston & Portsmouth	27.07	— —	34.28	38.13	— —	55.78	19.57	20.78	23.38
Cleveland, Ohio	— —	— —	— —	— —	— —	— —	— —	18.00	— —
Fort Dodge, Iowa	22.50	— —	28.50	31.00	36.50	50.00	15.00	15.00	16.25
Grand Rapids, Mich.	24.50	— —	30.50	33.00	— —	52.00	17.00	17.00	18.25
Gypsum, Ohio	24.50	28.50	30.50	33.00	38.50	52.00	17.00	17.00	18.25
Laramie, Wyo.	26.75	— —	34.75	— —	— —	56.25	— —	21.25	— —
Loveland, Colo.	26.50	— —	34.50	39.00	— —	56.00	— —	21.00	— —
*Metro N. Y.—N. J. Whses.	24.50	— —	31.44	34.99	— —	52.94	17.00	17.94	20.24
Miami, Fla.	— —	— —	— —	— —	— —	— —	— —	24.37	— —
*Oakfield, N. Y.	24.50	28.50	30.50	33.00	38.50	52.00	17.00	17.00	18.25
*Philadelphia, Pa.	26.50	— —	33.44	36.99	— —	54.94	19.00	19.94	22.24
Plasterco, Va.	23.50	— —	29.50	32.00	— —	51.00	16.00	16.00	17.25
Southard, Okla.	24.50	— —	30.50	31.50	38.50	52.00	17.00	17.00	18.25
†Sweetwater Tex.	24.50	— —	27.00	28.00	— —	52.00	17.00	17.00	18.25

* Minimum pickup 5000 sq. ft. patented gypsum board and/or lath products. Note: Any mixture of regular and metallized patented board products may be combined to make up the 5000 ft. minimum.

x Price also applies pickups only at Eldorado, Okla.

10000 The above prices apply to the sale of all board embodying the claims of our patents in all markets except where an exception is made as follows:

(1) 24" x 48" Cutstock Plasterboard: $19.50 per M sq. ft. for 1/4" and 3/8" thicknesses and $20.75 per M sq. ft. for 1/2" thickness, f.o.b. trucks at Southard, Oklahoma.

(2) 32" x 48" Gypsum Board. In all areas 32" x 48" gypsum board is subject to the minimum wallboard price except:

(a) Where used for specific roof jobs it is subject to the minimum plasterboard price for such specific jobs.

†(b) In all states east of the Mississippi River and in the states of Missouri, Kansas, Oklahoma, Arkansas and Louisiana, 32" x 48" board, if grey surfaced and round edged, is subject to minimum plasterboard price.

(3) 36" x 48" Gypsum Board. 36" x 48" is standard plasterboard size in all states for use on specific gypsum roof jobs only and is subject to minimum plasterboard price for such specific gypsum roof jobs.

(4) Minimum Price Cutstock Plasterboard picked up for destinations in Niagara, Erie (including the town of Gowanda, New York) Monroe and Wayne Counties, N. Y.: 1/4" and 3/8" thicknesses $14.50 per M sq. ft. f.o.b. trucks at Oakfield, N. Y. This price does not apply to 32" x 48" board. See paragraph (2).

(5) Refer to Board License Bulletin No. 1 for differentials applicable on odd sizes and on sales to contractors, roofing contractors and metal ceiling contractors. (Note: Sales to roofing contractors are for specific roof jobs only.)

Very truly yours,

UNITED STATES GYPSUM COMPANY

Vice President.

† Indicates change in this reissue.

10001 UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

SEPTEMBER 17, 1935

Prices F.O.B. Trucks at Mills & Warehouses—Board License Bulletin No. 2—Cancels Bulletin No. 2 Dated August 27, 1935

E. S. PITTS,
Office

DEAR SIRS: Referring to our license contract with you, you are hereby notified that the minimum prices at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent), including Haggerty patent number 1,500,452 and Hite patent number 1,230,297, are as follows:

Dealer Prices f.o.b. Trucks Mills or Warehouses (Applying for standard sizes as listed in Bulletin No. 4)	1/4" Gypsum Wallboard (Wt. 950 # per M)	5/16" Gypsum Wallboard (Wt. 1175 # per M) (See Bul. No. 1 Note *) †	3/8" Gypsum Wallboard (Wt. 1400 # per M)	1/2" Gypsum Wallboard (Wt. 1900 # per M)	3/4" Gypsum Wallboard (Wt. 3300 # per M)	3/8" Tiled Gypsum Wallbd. (Wt. 1400 # per M)	1/4" Gypsum Plasterboard (Wt. 950 # per M)	3/8" Gypsum Plasterboard (Wt. 1400 # per M)	1/2" Gypsum Plasterboard (Wt. 1900 # per M)
Acme, Texas	24.50x	— —	30.50x	31.50	— —	52.00	17.00	17.00x	18.25
*Boston & Portsmouth, Mass.	27.07	— —	34.28	38.13	— —	55.78	19.57	20.78	23.38
Cleveland, Ohio	— —	— —	— —	— —	— —	— —	— —	18.00	— —
Fort Dodge, Iowa	22.50	— —	28.50	31.00	36.50	50.00	15.00	15.00	16.25
Grand Rapids, Mich.	24.50	— —	30.50	33.00	— —	52.00	17.00	17.00	18.25
Gypsum, Ohio	24.50	28.50	30.50	33.00	38.50	52.00	17.00	17.00	18.25
Laramie, Wyo.	26.75	— —	34.75	— —	— —	56.25	— —	21.25	— —
Loveland, Colo.	26.50	— —	34.50	39.00	— —	56.00	— —	21.00	— —
*Metro N. Y.—N. J. Whses.	24.50	— —	27.44	34.99	— —	52.94	17.00	17.94	20.24
Miami, Fla.	— —	— —	— —	— —	— —	— —	— —	24.37	— —
*Oakfield, N. Y.	24.30	28.50	30.50	33.00	38.50	52.00	17.00	17.00	18.25
*Philadelphia, Pa.	26.50	— —	35.44	36.99	— —	54.94	19.00	19.94	22.24
Plasterco, Va.	23.50	— —	29.50	32.00	— —	51.00	16.00	16.00	17.25
Southard, Okla.	24.50	— —	30.50	31.50	38.50	52.00	17.00	17.00	18.25
Sweetwater, Tex.	24.50	— —	30.50	31.50	— —	52.00	17.00	17.00	18.25

* Minimum pickup 5000 sq. ft. patented gypsum board and/or lath products. Note: Any mixture of regular and metallized patented board products may be combined to make up the 5000 ft. minimum.

x Price also applies pickups only at Eldorado, Okla.

10002 The above prices apply to the sale of all board embodying the claims of our patents in all markets except where an exception is made as follows:

†(1) 24″ x 48″ Cutstock Plasterboard: $19.50 per M sq. ft. for 1/4″ and 3/8″ thicknesses and $20.75 per M sq. ft. for 1/2″ thickness, f.o.b. trucks at Southard, Oklahoma.

†(2) 32″ x 48″ Gypsum Board. In all areas 32″ x 48″ gypsum board is subject to the minimum wallboard price except:

(a) Where used for specific roof jobs it is subject to the minimum plasterboard price for such specific jobs.

(b) In all states east of the Mississippi River (except Wisconsin and Upper Michigan), and in the states of Missouri, Kansas, Oklahoma, Arkansas and Louisiana, 32″ x 48″ board, if grey surfaced and round edged, is subject to minimum plasterboard price.

(3) 36″ x 48″ Gypsum Board. 36″ x 48″ is standard plasterboard size in all states for use on specific gypsum roof jobs only and is subject to minimum plasterboard price for such specific gypsum roof jobs.

(4) Minimum Price Cutstock Plasterboard picked up for destinations in Niagara, Erie (including the town of Gowanda, New York) Monroe and Wayne Counties, N. Y.: 1/4″ and 3/8″ thicknesses $14.50 per M sq. ft. f.o.b. trucks at Oakfield, N. Y. This price does not apply to 32″ x 48″ board. See paragraph (2).

†(5) Refer to Board License Bulletin No. 1 for differentials applicable on odd sizes and on sales to contractors, roofing contractors and metal ceiling contractors. (Note: Sales to roofing contractors are for specific roof jobs only.)

Very truly yours,

UNITED STATES GYPSUM COMPANY

Vice President.

† Indicates change in this reissue.

10003 UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

AUGUST 27, 1935

Prices F.O.B. Trucks at Mills and Warehouses—Board License Bulletin No. 2—Cancels Bulletin No. 2
Dated August 21, 1935

E. S. PITTS.

DEAR SIRS: Referring to our license contract with you, you are hereby notified that the minimum prices effective September 1, 1935, at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent), including Haggerty patent number 1,500,452 and Hite patent number 1,230,297, are as follows:

Minimum Prices f.o.b. Trucks Mills or Warehouses	3/8" Gypsum Wallboard (Wt. 1400# per M)	1/4" Gypsum Wallboard (Wt. 950# per M)	1/2" Gypsum Wallboard (Wt. 1900# per M)	3/4" Gypsum Wallboard (Wt. 3300# per M)	7/8" Tiled Gypsum Wallbd. (Wt. 1400# per M)	3/8" Gypsum Plasterboard (Wt. 1400# per M)	1/4" Gypsum Plasterboard (Wt. 950# per M)	1/2" Gypsum Plasterboard (Wt. 1900# per M)
Plastereo, Va.	29.50	23.50	32.00	— —	51.00	16.00	16.00	17.25
Fort Dodge, Ia.	28.50	22.50	31.00	36.50	50.00	15.00	15.00	16.25
Southard, Okla.	30.50	24.50	31.50	38.50	52.00	17.00	17.00	18.25
Sweetwater, Texas	30.50	24.50	31.50	— —	52.00	17.00	17.00	18.25
Acme, Texas	30.50x	24.50x	31.50	— —	52.00	17.00x	17.00	18.25
Gypsum, Ohio	30.50	24.50	33.00	38.50	52.00	17.00	17.00	18.25
Grand Rapids, Mich.	30.50	24.50	33.00	— —	52.00	17.00	17.00	18.25
†*Oakfield, N. Y.	30.50	24.50	33.00	38.50	52.00	17.00	17.00	18.25
Laramie, Wyo.	34.75	26.75	— —	— —	56.25	21.25	— —	— —
Loveland, Colo.	34.50	26.50	39.00	— —	56.00	21.00	— —	— —
†*Metro N. Y.—N. J. Whses.	31.44	24.50	34.99	— —	52.94	17.94	17.00	20.24
†*Philadelphia, Pa.	33.44	26.50	36.99	— —	54.94	19.94	19.00	22.24
†*Boston & Portsmouth, Mass.	34.28	27.07	38.13	— —	55.78	20.78	19.57	23.38
†Cleveland, Ohio	— —	— —	— —	— —	— —	18.00	— —	— —
†Miami, Fla.	— —	— —	— —	— —	— —	24.37	— —	— —

* Minimum pickup 5000 sq. ft. patented gypsum board and/or lath products. Note: Any mixture of regular and metallized patented board products may be combined to make up the 5000 ft. minimum.

x Price also applies pickups only at Eldorado, Okla.

Very truly yours,
UNITED STATES GYPSUM COMPANY

Vice President.

† Indicates change in this reissue.

10004 UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

AUGUST 21, 1935

Prices F.O.B. Trucks at Mills and Warehouses—Board License Bulletin No. 2—Cancels Bulletin No. 2 Dated July 5, 1935

DEAR SIRS: Referring to our license contract with you, you are hereby notified that the minimum prices effective August 26, 1935, at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent), including Haggerty patent number 1,500,452 and Hite patent number 1,230,297, are as follows:

Minimum Prices f.o.b. Trucks Mills or Warehouses	3/8" Gypsum Wallboard (Wt. 1400# per M)	1/4" Gypsum Wallboard (Wt. 950# per M)	1/2" Gypsum Wallboard (Wt. 1900# per M)	3/4" Gypsum Wallboard (Wt. 3300# per M)	3/8" Tiled Gypsum Wallbd. (Wt. 1400# per M)	3/8" Gypsum Plasterboard (Wt. 1400# per M)	1/4" Gypsum Plasterboard (Wt. 950# per M)	1/2" Gypsum Plasterboard (Wt. 1900# per M)
Plasterco	29.50	23.50	32.00	— —	51.00	16.00	16.00	17.25
Fort Dodge	28.50	22.50	31.00	36.50	50.00	15.00	15.00	16.25
Southard	30.50	24.50	31.50	38.50	52.00	17.00	17.00	18.25
Sweetwater	30.50	24.50	31.50	— —	52.00	17.00	17.00	18.25
Acme	30.50x	24.50x	31.50	— —	52.00	17.00x	17.00	18.25
†Gypsum	30.50	24.50	33.00	38.50	52.00	17.00	17.00	18.25
†Grand Rapids	30.50	24.50	33.00	— —	52.00	17.00	17.00	18.25
*Oakfield	30.50	26.50	33.00	38.50	52.00	17.00	17.00	18.25
Laramie	34.75	26.75	— —	— —	56.25	21.25	— —	— —
Loveland	34.50	26.50	39.00	— —	56.00	21.00	— —	— —
*Metro. N. Y.-N. J. Whses.	31.44	26.50	34.90	— —	52.94	17.94	17.00	20.24
*Philadelphia	33.44	28.50	36.99	— —	54.94	19.94	19.00	22.24
*Boston & Portsmouth	34.28	29.07	38.13	— —	55.78	20.78	19.57	23.38

* Minimum pickup 5000 sq. ft. patented gypsum board and/or lath products. Note: Any mixture of regular and metallized patented board products may be combined to make up the 5000 ft. minimum.

x Price also applies pickups only at Eldorado, Okla.

Very truly yours,
UNITED STATES GYPSUM COMPANY

Vice President.

† Indicates change in this reissue.

10005 UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

JULY 5, 1935

Prices F.O.B. Trucks at Mills and Warehouses—Board License Bulletin No. 2—Cancels Bulletin No. 2 Dated April 16, 1935

DEAR SIRS: Referring to our license contract with you, you are hereby notified that the minimum prices effective July 10, 1935, at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent), including Haggerty patent number 1,500,452 and Hite patent number 1,230,297, are as follows:

Minimum Prices f.o.b. Trucks Mills or Warehouses	3/8" Gypsum Wallboard (Wt. 1400# per M)	1/4" Gypsum Wallboard (Wt. 950# per M)	1/2". Gypsum Wallboard (Wt. 1900# per M)	3/4". Gypsum Wallboard (Wt. 3300# per M)	3/8" Tiled Gypsum Wallbd. (Wt. 1400# per M)	3/8" Gypsum Plasterboard (Wt. 1400# per M)	1/4" Gypsum Plasterboard (Wt. 950# per M)	1/2" Gypsum Plasterboard (Wt. 1900# per M)
†Plastereo	29.50	23.50	32.00	— —	51.00	16.00	16.00	17.25
†Fort Dodge	28.50	22.50	31.00	36.50	50.00	15.00	15.00	16.25
Southard	30.50	24.50	31.50	38.50	52.00	17.00	17.00	18.25
Sweetwater	30.50	24.50	31.50	— —	52.00	17.00	17.00	18.25
Acme	30.50x	24.50x	31.50	— —	52.00	17.00x	17.00	18.25
Gypsum	30.50	26.50	33.00	38.50	52.00	17.00	17.00	18.25
Grand Rapids	30.50	26.50	33.00	— —	52.00	17.00	17.00	18.25
*Oakfield	30.50	26.50	33.00	38.50	52.00	17.00	17.00	18.25
Laramie	34.75*	26.75	— —	— —	56.25	21.25	— —	— —
Loveland	34.50	26.50	39.00	— —	56.00	21.00	— —	— —
*Metro N. Y.-N. J. Whses.	31.44	26.50	34.99	— —	52.94	17.94	17.00	20.24
*Philadelphia	33.44	28.50	36.99	— —	54.94	19.94	19.00	22.24
*Boston & Portsmouth	34.28	29.07	38.13	— —	55.78	20.78	19.57	23.38

* Minimum pickup 5000 sq. ft. patented gypsum board and/or lath products.

x Price also applies pickups only at Eldorado, Okla.

Very truly yours,

UNITED STATES GYPSUM COMPANY

Vice President.

† Indicates change in this reissue.

10006 UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

APRIL 16, 1935

Prices F.O.B. Trucks at Mills and Warehouses—Board License Bulletin No. 2—Cancels Bulletin No. 2 Dated March 15, 1935

DEAR SIRS: Referring to our license contract with you, you are hereby notified that the minimum prices effective April 18, 1935, at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent), including Haggerty patent number 1,500,452 and Hite number 1,230,297, are as follows:

Minimum Prices f.o.b. Trucks Mills or Warehouses	3/8" Gypsum Wallboard (Wt. 1400 # per M)	1/4" Gypsum Wallboard (Wt. 950# per M)	1/2" Gypsum Wallboard (Wt. 1900 # per M)	3/4" Gypsum Wallboard (Wt. 3300 # per M)	3/8" Tiled Gypsum Wallbd. (Wt. 1400 # per M)	3/8" Gypsum Plasterboard (Wt. 1400 # per M)	1/4" Gypsum Plasterboard (Wt. 950 # per M)	1/2" Gypsum Plasterboard (Wt. 1900 # per M)
Plasterco	29.50	25.50	32.00	— —	51.00	16.00	16.00	17.25
Fort Dodge	28.50	24.50	31.00	36.50	50.00	15.00	15.00	16.25
Southard	30.50	24.50	31.50	38.50	52.00	17.00	17.00	18.25
Sweetwater	30.50	24.50	31.50	— —	52.00	17.00	17.00	18.25
Acme	30.50x	24.50x	31.50	— —	52.00	17.00x	17.00	18.25
Gypsum	30.50	26.50	33.00	38.50	52.00	17.00	17.00	18.25
Grand Rapids	30.50	26.50	33.00	— —	52.00	17.00	17.00	18.25
*Oakfield	30.50	26.50	33.00	38.50	52.00	17.00	17.00	18.25
†Laramie	34.75	26.75	— —	— —	56.25	21.25	— —	— —
†Loveland	34.50	26.50	39.00	— —	56.00	21.00	— —	— —
†*Metro N. Y.-N. J. Whses.	31.44	26.50	34 .9	— —	52.94	17.94	17.00	20.24
†*Philadelphia	33.44	28.50	3 .99	— —	54.94	19.94	19.00	22.24
†*Boston & Portsmouth	34.28	29.07	38.13	— —	55.78	20.78	19.57	23.38

* Minimum pickup 5000 sq. ft. patented gypsum board and/or lath products.

x Price also applies pickups only at Eldorado, Okla.

Very truly yours,

UNITED STATES GYPSUM COMPANY

Vice President.

† Indicates change in this reissue.

4972

10007

UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

MARCH 15, 1935

Prices F.O.B. Trucks at Mills and Warehouses—Board License Bulletin No. 2—Cancels Bulletin No. 2 Dated February 25, 1935

DEAR SIRS: Referring to our license contract with you, you are hereby notified that the minimum prices effective March 20, 1935, at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent), including Haggerty patent number 1,500,452 and Hite patent number 1,230,297, are as follows:

Minimum Prices f.o.b. Trucks Mills or Warehouses	3/8" Gypsum Wallboard (Wt. 1400# per M)	1/4" Gypsum Wallboard (Wt. 950# per M)	1/2" Gypsum Wallboard (Wt. 1900# per M)	3/4" Gypsum Wallboard (Wt. 3300# per M)	3/8" Tiled Gypsum Wallbd. (Wt. 1400# per M)	3/8" Gypsum Plasterboard (Wt. 1400# per M)	1/4" Gypsum Plasterboard (Wt. 950# per M)	1/2" Gypsum Plasterboard (Wt. 1900# per M)
Plasterco	29.50	25.50	32.00	— —	51.00	16.00	16.00	17.25
Fort Dodge	28.50	24.50	31.00	36.50	50.00	15.00	15.00	16.25
†Southard	30.50	24.50	31.50	38.50	52.00	17.00	17.00	18.25
†Sweetwater	30.50	24.50	31.50	— —	52.00	17.00	17.00	18.25
†Acme	30.50x	24.50x	31.50	— —	52.00	17.00x	17.00	18.25
Gypsum	30.50	26.50	33.00	38.50	52.00	17.00	17.00	18.25
Grand Rapids	30.50	26.50	33.00	— —	52.00	17.00	17.00	18.25
*Oakfield	30.50	26.50	33.00	38.50	52.00	17.00	17.00	18.25
Laramie	34.25	26.50	— —	— —	55.75	20.75	— —	— —
Loveland	34.00	26.25	38.50	— —	55.50	20.50	— —	— —
*Metro N. Y.-N. J. Whses.	31.23	26.35	34.71	— —	52.73	17.73	16.85	19.96
*Philadelphia	33.23	28.35	36.71	— —	54.73	19.73	18.85	21.96
*Boston & Portsmouth	34.00	28.88	37.75	— —	55.50	20.50	19.38	23.00

* Minimum pickup 5,000 sq. ft. board and/or lath.

x Price also applies pickups only at Eldorado, Okla.

Very truly yours,

UNITED STATES GYPSUM COMPANY

Vice President.

† Indicates change in this reissue.

10008 UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

FEBRUARY 25, 1935

Prices F.O.B. Trucks at Mills and Warehouses—Board License Bulletin No. 2—Cancels Bulletin No. 2, Dated October 16, 1934—and Supplement Dated November 22, 1934.

DEAR SIRS: Referring to our license contract with you, you are hereby notified that the minimum prices effective March 1, 1935, at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent), including Haggerty patent number 1,500,452 and Hite patent number 1,230,297, are as follows:

Minimum Prices f.o.b. Trucks Mills or Warehouses (Note changes in Weights)	3/8" Gypsum Wallboard (Wt. 1400 # per M)	1/4" Gypsum Wallboard (Wt. 950 # per M)	1/2" Gypsum Wallboard (Wt. 1900 # per M)	3/4" Gypsum Wallboard (Wt. 3500 # per M)	3/8" Tiled Gypsum Wallbd. (Wt. 1400 # per M)	3/8" Gypsum Plasterboard (Wt. 1400 # per M)	1/4" Gypsum Plasterboard (Wt. 950 # per M)	1/2" Gypsum Plasterboard (Wt. 1900 # per M)
Plasterco	29.50	25.50	32.00	— —	51.00	16.00	16.00	17.25
Fort Dodge	28.50	24.50	31.00	36.50	50.00	15.00	15.00	16.25
Southard	30.50	26.50	31.50	38.50	52.00	17.00	17.00	18.25
Sweetwater	30.50	26.50	31.50	— —	52.00	17.00	17.00	18.25
Acme	30.50x	26.50x	31.50	— —	52.00	17.00x	17.00	18.25
Gypsum	30.50	26.50	33.00	38.50	52.00	17.00	17.00	18.25
Grand Rapids	30.50	26.50	33.00	— —	52.00	17.00	17.00	18.25
*Oakfield	30.50	26.50	33.00	38.50	52.00	17.00	17.00	18.25
†Laramie	34.25	26.50	— —	— —	55.75	20.75	— —	— —
†Loveland	34.00	26.25	38.50	— —	55.50	20.50	— —	— —
†*Metro N. Y.-N. J. Whses.	31.23	26.35	34.71	— —	52.73	17.73	16.85	19.96
†*Philadelphia	33.23	28.35	36.71	— —	54.73	19.73	18.85	21.96
†*Boston & Portsmouth	34.00	28.88	37.75	— —	55.50	20.50	19.38	23.00

* Minimum pickup 5,000 sq. ft. board and/or lath.
x Price also applies pickups only at Eldorado, Okla.

Very truly yours,

UNITED STATES GYPSUM COMPANY

Vice President.

† Indicates change in this reissue.

10009 UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

OCTOBER 16, 1934

Prices F.O.B. Trucks at Mills and Warehouses—Board License Bulletin No. 2—Cancels Bulletin No. 2, Dated May 25, 1934

DEAR SIRS: Referring to our license contract with you, you are hereby notified that †the minimum prices effective November 1, 1934, at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent), including Haggerty patent number 1,500,452 and Hite patent number 1,230,297, are as follows:

Minimum Prices f.o.b. Trucks Mills or Warehouses	3/8" Gypsum Wallboard (Wt. 1600 # per M)	1/4" Gypsum Wallboard (Wt. 1050 # per M)	1/2" Gypsum Wallboard (Wt. 2150 # per M)	3/4" Gypsum Wallboard (Wt. 3300 # per M)	3/8" Tiled Gypsum Wallbd. (Wt. 1600 # per M)	3/8" Gypsum Plasterboard (Wt. 1600 # per M)	1/4" Gypsum Plasterboard (Wt. 1050 # per M)	1/2" Gypsum Plasterboard (Wt. 2150 # per M)
Plastereo	29.50	25.50	32.00	— —	51.00	16.00	16.00	17.25
Fort Dodge	28.50	24.50	31.00	36.50	50.00	15.00	15.00	16.25
†Southard	30.50	26.50	31.50	38.50	52.00	17.00	17.00	18.25
†Sweetwater	30.50	26.50	31.50	— —	52.00	17.00	17.00	18.25
†Acme	30.50x	26.50x	31.50	— —	52.00	17.00x	17.00	18.25
Gypsum	30.50	26.50	33.00	38.50	52.00	17.00	17.00	18.25
Grand Rapids	30.50	26.50	33.00	— —	52.00	17.00	17.00	18.25
*Oakfield	30.50	26.50	33.00	38.50	52.00	17.00	17.00	18.25
†Laramie	34.50	27.00	— —	— —	55.00	21.50	— —	— —
†Loveland	36.00	27.50	41.00	— —	57.50	22.00	— —	— —
*Metro N. Y.-N. J. Whses.	31.62	26.55	35.19	— —	53.12	18.12	17.05	20.44
*Philadelphia	33.62	28.55	37.19	— —	55.12	20.12	19.05	22.44
*Boston & Portsmouth	34.50	29.13	38.38	— —	56.00	21.00	19.63	23.63
*Buffalo	31.78	27.34	34.72	— —	53.28	18.28	17.84	19.97

* Minimum pickup 5,000 sq. ft. board and/or lath.
x Price also applies pickups only at Eldorado, Okla.

Very truly yours,

UNITED STATES GYPSUM COMPANY

Vice President.

† Indicates change in this reissue.

10010 UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

MAY 25, 1934

Prices F.O.B. Trucks at Mills and Warehouses—Board License Bulletin No. 2—Cancels Bulletin No. 2, Dated April 23, 1934

DEAR SIRS: Referring to our license contract with you, you are hereby notified that the minimum prices effective May 31, 1934, at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent), including Haggerty patent number 1,500,452 and Hite patent number 1,230,297, are as follows:

Minimum Prices f.o.b. Trucks Mills or Warehouses	3/8" Gypsum Wallboard (Wt. 1600 # per M)	1/4" Gypsum Wallboard (Wt. 1050 # per M)	1/2" Gypsum Wallboard (Wt. 2150 # per M)	3/4" Gypsum Wallboard (Wt. 3300 # per M)	3/8" Tiled Gypsum Wallbd. (Wt. 1600 # per M)	3/8" Gypsum Plasterboard (Wt. 1600 # per M)	1/4" Gypsum Plasterboard (Wt. 1050 # per M)	1/2" Gypsum Plasterboard (Wt. 2150 # per M)
Plasterco	29.50	25.50	32.00	— —	51.00	16.00	16.00	17.25
Fort Dodge	28.50	24.50	31.00	36.50	50.00	15.00	15.00	16.25
Southard	28.50	24.50	29.50	36.50	50.00	15.00	15.00	16.25
Sweetwater	28.50	24.50	29.50	— —	50.00	15.00	15.00	16.25
†Acme	28.50x	24.50x	29.50	— —	50.00	15.00x	15.00	16.25
Gypsum	30.50	26.50	33.00	38.50	52.00	17.00	17.00	18.25
Grand Rapids	30.50	26.50	33.00	— —	52.00	17.00	17.00	18.25
*Oakfield	30.50	26.50	33.00	38.50	52.00	17.00	17.00	18.25
†Laramie	34.50	27.00	— —	— —	55.00	21.50	— —	— —
†Loveland	36.00	27.50	41.00	— —	57.50	22.00	— —	— —
*Metro N. Y.-N. J. Whses.	31.62	26.55	35.19	— —	53.12	18.12	17.05	20.44
*Philadelphia	33.62	28.55	37.19	— —	55.12	20.12	19.05	22.44
*Boston & Portsmouth	34.50	29.13	38.38	— —	56.00	21.00	19.63	23.63
*Buffalo	31.78	27.34	34.72	— —	53.28	18.28	17.84	19.97

* Minimum pickup 5,000 sq. ft. board and/or lath.
x. Price also applies pickups only at Eldorado, Okla.

Very truly yours,

UNITED STATES GYPSUM COMPANY

Vice President.

† Indicates change in this reissue.

10011 UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

APRIL 23, 1934.

Prices F.O.B. Trucks at Mills and Warehouses—Board License Bulletin No. 2—Cancels Bulletin No. 2, Dated April 10, 1934.

DEAR SIRS: Referring to our license contract with you, you are hereby notified that the minimum prices effective April 25, 1934, at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent), including Haggerty patent number 1,500,452 and Hite patent number 1,230,297 are as follows:

Minimum Prices f.o.b. Trucks Mills or Warehouses	3/8" Gypsum Wallboard (Wt. 1600 # per M)	1/4" Gypsum Wallboard (Wt. 1050 # per M)	1/2" Gypsum Wallboard (Wt. 2150 # per M)	3/4" Gypsum Wallboard (Wt. 3300 # per M)	3/8" Tiled Gypsum Wallbd. (Wt. 1600 # per M)	3/8" Gypsum Plasterboard (Wt. 1600 # per M)	1/4" Gypsum Plasterboard (Wt. 1050 # per M)	1/2" Gypsum Plasterboard (Wt. 2150 # per M)
Plasterco	29.50	25.50	32.00	— —	51.00	16.00	16.00	17.25
Fort Dodge	28.50	24.50	31.00	36.50	50.00	15.00	15.00	16.25
Southard	28.50	24.50	29.50	36.50	50.00	15.00	15.00	16.25
Sweetwater	28.50	24.50	29.50	— —	50.00	15.00	15.00	16.25
Acme	28.50	24.50	29.50	— —	50.00	15.00	15.00	16.25
Gypsum	30.50	26.50	33.00	38.50	52.00	17.00	17.00	18.25
Grand Rapids	30.50	26.50	33.00	— —	52.00	17.00	17.00	18.25
*Oakfield	30.50	26.50	33.00	38.50	52.00	17.00	17.00	18.25
Laramie	34.50	29.00	— —	— —	55.00	21.50	— —	— —
†Loveland	36.00	29.50	41.00	— —	57.50	22.00	— —	— —
*Metro. N. Y.-N. J. Whses.	31.62	26.55	35.19	— —	53.12	18.12	17.05	20.44
*Philadelphia	33.62	28.55	37.19	— —	55.12	20.12	19.05	22.44
*Boston & Portsmouth	34.50	29.13	38.38	— —	56.00	21.00	19.63	23.63
*Buffalo	31.78	27.34	34.72	— —	53.28	18.28	17.84	19.97

* Minimum pickup 5,000 sq. ft. board and/or lath.

Very truly yours,

UNITED STATES GYPSUM COMPANY

Vice President.

† Indicates change in this reissue.

10012 UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

APRIL 10, 1934

Prices F.O.B. Trucks at Mills and Warehouses—Board License Bulletin No. 2—Cancels Bulletin No. 2, Dated October 16, 1933

DEAR SIRS: Referring to our license contract with you, you are hereby notified that the minimum prices effective April 25, 1934, at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent), including Haggerty patent number 1,500,452 and Hite patent number 1,230,297, are as follows:

Minimum Prices f.o.b. Trucks Mills or Warehouses	3/8" Gypsum Wallboard (Wt. 1600# per M)	1/4" Gypsum Wallboard (Wt. 1050# per M)	1/2" Gypsum Wallboard (Wt. 2150# per M)	3/4" Gypsum Wallboard (Wt. 3300# per M)	3/8" Tiled Gypsum Wallbd. (Wt. 1600# per M)	3/8" Gypsum Plasterboard (Wt. 1600# per M)	1/4" Gypsum Plasterboard (Wt. 1050# per M)	1/2" Gypsum Plasterboard (Wt. 2150# per M)
†Plasterco	29.50	25.50	32.00	— —	51.00	16.00	16.00	17.25
†Fort Dodge	28.50	24.50	31.00	36.50	50.00	15.00	15.00	16.25
†Southard	28.50	24.50	29.50	36.50	50.00	15.00	15.00	16.25
†Sweetwater	28.50	24.50	29.50	— —	50.00	15.00	15.00	16.25
†Acme	28.50	24.50	29.50	— —	50.00	15.00	15.00	16.25
†Gypsum	30.50	26.50	33.00	38.50	52.00	17.00	17.00	18.25
†Grand Rapids	30.50	26.50	33.00	— —	52.00	17.00	17.00	18.25
†*Oakfield	30.50	26.50	33.00	38.50	52.00	17.00	17.00	18.25
†Laramie	34.50	29.00	— —	— —	55.00	21.50	— —	— —
†Loveland	36.00	29.50	39.50	— —	57.50	22.00	— —	— —
†*Metro N. Y.-N. J. Whses.	31.62	26.55	35.19	— —	53.12	18.12	17.05	20.44
†*Philadelphia	33.62	28.55	37.19	— —	55.12	20.12	19.05	22.44
†*Boston & Portsmouth	34.50	29.13	38.38	— —	56.00	21.00	19.63	23.63
†*Buffalo	31.78	27.34	34.72	— —	53.28	18.28	17.84	17.97

* Minimum pickup 5,000 sq. ft. board and/or lath.

Very truly yours,

UNITED STATES GYPSUM COMPANY

Vice President.

10013 UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

OCTOBER 16, 1933

Board License Bulletin No. 2—(Cancels Previous Bulletin No. 2)—Prices F.O.B. Trucks at Mills and Warehouses

DEAR SIRS: Referring to our license contract with you, you are hereby notified that the minimum prices effective immediately, at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent), including Haggerty patent number 1,500,452 and Hite patent number 1,230,297, are as follows:

Minimum Prices f.o.b. Trucks Mills or Warehouses	3/8" Gypsum Wallboard (Wt. 1600 # per M)	1/4" Gypsum Wallboard (Wt. 1050 # per M)	1/2" Gypsum Wallboard (Wt. 2150 # per M)	3/4" Gypsum Wallboard (Wt. 3300 # per M)	3/8" Tiled Gypsum Wallbd. (Wt. 1600 # per M)	3/8" Gypsum Plasterboard (Wt. 1600 # per M)	1/4" Gypsum Plasterboard (Wt. 1050 # per M)	1/2" Gypsum Plasterboard (Wt. 2150 # per M)
Plasterco	28.00	23.50	30.50	— —	51.00	16.00	16.00	17.25†
Fort Dodge	27.00	22.50	29.50	35.00	50.00	15.00	15.00	16.25
Southard	27.00	22.50	28.00	35.00	50.00	15.00	15.00	16.25
Sweetwater	27.00	22.50	28.00	— —	50.00	15.00	15.00	16.25
Acme	27.00	22.50	28.00	— —	50.00	15.00	15.00	16.25
Gypsum	29.00	26.50	31.50	37.00	52.00	17.00	17.00	18.25
Grand Rapids	29.00	26.50	31.50	— —	52.00	17.00	17.00	18.25
*Oakfield	29.00	26.50	31.50	37.00	52.00	17.00	17.00	18.25
Laramie	33.00	27.00	— —	— —	55.00	21.50	— —	— —
Loveland	34.50	27.50	39.50	— —	57.50	22.00	— —	— —
*Metro N. Y.-N. J. Whses.	30.12	26.55	33.69	— —	53.12	18.12	17.05	20.44†
*Philadelphia	32.12	28.55	35.69	— —	55.12	20.12	19.05	22.44†
*Boston & Portsmouth	33.00	29.13	36.88	— —	56.00	21.00	19.63	23.63†
*Buffalo	30.28	27.34	33.22	— —	53.28	18.28	17.84	19.97†

* Minimum pickup 5,000 sq. ft. board and/or lath.

Very truly yours,

UNITED STATES GYPSUM COMPANY

Vice President.

This letter sent to the following:

A. Harner
R. Cooke
C. J. Lane
E. S. Pitts
F. M. Miller
R. J. Sterling
C. C. Spray
E. A. Gallagher
S. S. Jenkins
W. T. Coe

Mr. M. H. Baker, President
National Gypsum Company
409 Jackson Boulevard
Buffalo, New York

Messrs. Abel Davis and
Eugene Holland, Receivers
in Equity
Universal Gypsum Company
105 W. Madison Street
Chicago, Illinois

Mr. S. J. Kelley, President
Kelley Plasterboard Co.,
Delawanna
New Jersey

Mr. F. G. Ebsary, President
Ebsary Gypsum Company, Inc.
Scottsville
New York

cc to:
Mr. George N. Lenci,
Ebsary Gypsum Company, Inc.
414 Ogden Street
Newark, New Jersey

Mr. W. P. Fuller, President
Atlantic Gypsum Products Company
40 Central Street
Boston, Massachusetts

Mr. L. I. Neale, Vice President
Atlantic Gypsum Products Company
60 East 42d Street
New York, New York

Mr. C. O. Brown, Vice President
Certain-teed Products Corporation
100 East 42d Street
New York, New York

Mr. Warren Henley, Merch. Mgr.
Certain-teed Products Corporation
2246 West 49th Street
Chicago, Illinois

Mr. C. F. Miller, President
American Gypsum Company
Port Clinton
Ohio

Mr. A. R. Black, Sales Manager
American Gypsum Company
Port Clinton
Ohio

10014 UNITED STATES GYSUM COMPANY
300 West Adams Street
CHICAGO

JANUARY 10, 1933

Board License Bulletin No. 2—(Cancels Previous Bulletin No. 2 & Supplements)—Prices F.O.B. Trucks at Mills and Warehouses

DEAR SIRS: Referring to our license contract with you, you are hereby notified that the minimum prices effective immediately, at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent), including Haggerty patent number 1,500,452 and Hite Patent number 1,230,297, are as follows:

Minimum Prices f.o.b. Trucks Mills or Warehouses	3/8" Gypsum Wallboard (Wt. 1600# per M)	1/4" Gypsum Wallboard (Wt. 1050# per M)	1/2" Gypsum Wallboard (Wt. 2150# per M)	3/4" Gypsum Wallboard (Wt. 3300# per M)	3/8" Tiled Gypsum Wallbd. (Wt. 1600# per M)	3/8" Gypsum Plasterboard (Wt. 1600# per M)	1/4" Gypsum Plasterboard (Wt. 1050# per M)	1/2" Gypsum Plasterboard (Wt. 2150# per M)
Plasterco	27.00	22.50	29.50	— —	50.00	15.00	15.00	16.25†
Fort Dodge	27.00	22.50	29.50	35.00	50.00	15.00	15.00	16.25†
Southard	27.00	22.50	28.00	35.00	50.00	15.00	15.00	16.25†
Sweetwater	27.00	22.50	28.00	— —	50.00	15.00	15.00	16.25†
Acme	27.00	22.50	28.00	— —	50.00	15.00	15.00	16.25†
Gypsum	29.00	26.50	31.50	37.00	52.00	17.00	17.00	18.25
Grand Rapids	29.00	26.50	31.50	— —	52.00	17.00	17.00	18.25
*Oakfield	29.00	26.50	31.50	37.00	52.00	17.00	17.00	18.25
Laramie	33.00	27.00	— —	— —	55.00	21.50	— —	— —
Loveland	34.50	27.50	39.50	— —	57.50	22.00	— —	— —
*Metro N. Y.—N. J. Whses.	30.44	26.76	34.12	— —	53.44	18.44	17.26	20.87
*Philadelphia	32.44	28.76	36.12	— —	55.44	20.44	19.26	22.87
*Boston & Portsmouth	33.32	29.34	37.31	— —	56.32	21.32	19.84	24.06†
*Buffalo	30.44	27.45	33.44	— —	53.44	18.44	17.95	20.19

* Minimum pickup 5,000 sq. ft. board and/or lath.

Very truly yours,

UNITED STATES GYPSUM COMPANY

Vice President.

10015 UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

AUGUST 12, 1932

Board License Bulletin No. 2—(Cancels Previous Bulletin No. 2 & Supplements)—Prices F.O.B. Trucks at Mills and Warehouses

DEAR SIRS: Referring to paragraph two of our license contract with you, you are hereby notified that the minimum prices effective immediately, at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent), including Haggerty patent number 1,500,452 and Hite patent number 1,230,297, are as follows:

Minimum Prices f.o.b. Trucks Mills or Warehouses	3/8" Gypsum Wallboard (Wt. 1600# per M)	1/4" Gypsum Wallboard (Wt. 1050# per M)	1/2" Gypsum Wallboard (Wt. 2150# per M)	3/4" Gypsum Wallboard (Wt. 3300# per M)	3/8" Tiled Gypsum Wallbd. (Wt. 1600# per M)	3/8" Gypsum Plasterboard (Wt. 1600# per M)	1/4" Gypsum Plasterboard (Wt. 1050# per M)	1/2" Gypsum Plasterboard (Wt. 2150# per M)
Plasterco	27.00	24.50	29.50	— —	50.00	15.00	15.00	16.25
Fort Dodge	27.00	22.50	29.50	35.00	50.00	15.00	15.00	16.25
Southard	27.00	24.50	28.00	35.00	50.00	15.00	15.00	16.25
Sweetwater	27.00	24.50	28.00	— —	50.00	15.00	15.00	16.25
Acme	27.00	24.50	28.00	— —	50.00	15.00	15.00	16.25
Gypsum	29.00	26.50	31.50	37.00	52.00	17.00	17.00	18.25
Grand Rapids	29.00	26.50	31.50	— —	52.00	17.00	17.00	18.25
*Oakfield	29.00	26.50	31.50	37.00	52.00	17.00	17.00	18.25
Laramie	33.00	27.00	— —	— —	55.00	21.50	— —	— —
Loveland	34.50	27.50	39.50	— —	57.50	22.00	— —	— —
*Metro N. Y.—N. J. Whses.	30.44	26.76	34.12	— —	53.44	18.44	17.26	20.87
*Philadelphia	32.44	28.76	36.12	— —	55.44	20.44	19.26	22.87
*Boston	33.32	29.34	37.31	— —	56.32	21.32	19.84	24.06
*Buffalo	30.44	27.45	33.44	— —	53.44	18.44	17.95	20.19

* Minimum pickup 5,000 sq. ft. board and/or lath.

Very truly yours,

UNITED STATES GYPSUM COMPANY

Vice President.

4982

10016

UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

JANUARY 27, 1932

Board License Bulletin No. 2—(Cancels Previous Bulletin No. 2)—Prices F.O.B. Trucks at Mills and Warehouses

DEAR SIRS: Referring to paragraph two of our license contract with you, you are hereby notified that the minimum prices effective immediately, at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent), including Haggerty patent number 1,500,452 and Hite patent number 1,230,297, are as follows:

Minimum Prices f.o.b. Trucks Mills or Warehouses	3/8" Gypsum Wallboard (Wt. 1600 # per M)	1/4" Gypsum Wallboard (Wt. 1050 # per M)	1/2" Gypsum Wallboard (Wt. 2150 # per M)	3/4" Gypsum Wallboard (Wt. 3300 # per M)	3/8" Tiled Gypsum Wallbd (Wt. 1600 # per M)	3/8" Gypsum Plasterboard (Wt. 1600 # per M)	1/4" Gypsum Plasterboard (Wt. 1050 # per M)	1/2" Gypsum Plasterboard (Wt. 2150 # per M)
field	27.00	24.50	29.50	35.00	50.00	15.00	15.00	16.25
sterco	27.00	24.50	29.50	— —	50.00	15.00	15.00	16.25
sum	27.00	24.50	29.50	35.00	50.00	15.00	15.00	16.25
nd Rapids	27.00	24.50	29.50	— —	50.00	15.00	15.00	16.25
t Dodge	27.00	22.50	29.50	35.00	50.00	15.00	15.00	16.25
thard	27.00	24.50	28.00	35.00	50.00	15.00	15.00	16.25
etwater	27.00	24.50	28.00	— —	50.00	15.00	15.00	16.25
ne	27.00	24.50	28.00	— —	50.00	15.00	15.00	16.25
ro N. Y.—N. J. Whses.	30.44	26.76	34.12	— —	53.44	18.44	17.26	20.87
adelphia	30.44	26.76	34.12	— —	53.44	18.44	17.26	20.87
ton	31.32	27.34	35.31	— —	54.32	19.32	17.84	22.06
falo	28.44	25.45	31.44	— —	51.44	16.44	15.95	18.19
roit	29.24	25.97	32.51	— —	52.24	17.24	16.47	19.26†
t Chicago	29.32	26.02	32.62	— —	52.32	17.32	16.52	19.37
amie	33.32	29.21	— —	— —	55.32	21.82	— —	— —
eland	34.82	29.71	39.93	— —	57.82	22.32	— —	— —

Prices shall apply to all shipments made after receipt of this notice except only upon bona fide orders actually received and accepted by you at you home office in writing before receipt hereof and shipped by you within ten days after receipt of this notice.

Very truly yours,
UNITED STATES GYPSUM COMPANY
Vice President in Charge of Sales.

† Indicates changes in this reissue.

CFH'

10017 UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

DECEMBER 28, 1931.

Board License Bulletin No. 2—(Cancels Previous Bulletin No. 2)—Prices F.O.B. Trucks at Mills and Warehouses

DEAR SIRS: Referring to paragraph two of our license contract with you, you are hereby notified that the minimum prices effective January 4, 1932, at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent), including Haggerty patent number 1,500,452 and Hite patent number 1,230,297, are as follows:

Minimum Prices f.o.b. Trucks Mills or Warehouses	3/8" Gypsum Wallboard (Wt. 1600 # per M)	1/4" Gypsum Wallboard (Wt. 1050 # per M)	1/2" Gypsum Wallboard (Wt. 2150 # per M)	3/4" Gypsum Wallboard (Wt. 3300 # per M)	3/8" Tiled Gypsum Wallbd. (Wt. 1600 # per M)	3/8" Gypsum Plasterboard (Wt. 1600 # per M)	1/4" Gypsum Plasterboard (Wt. 1050 # per M)	1/2" Gypsum Plasterboard (Wt. 2150 # per M)
Oakfield	27.00	24.50	29.50	35.00	50.00	15.00	15.00	16.25†
Plasterco	27.00	24.50	29.50	— —	50.00	15.00	15.00	16.25
Gypsum	27.00	24.50	29.50	35.00	50.00	15.00	15.00	16.25
Grand Rapids	27.00	24.50	29.50	— —	50.00	15.00	15.00	16.25
Fort Dodge	27.00	22.50	29.50	35.00	50.00	15.00	15.00	16.25
Southard	27.00	24.50	28.00	35.00	50.00	15.00	15.00	16.25
Sweetwater	27.00	24.50	28.00	— —	50.00	15.00	15.00	16.25
Acme	27.00	24.50	28.00	— —	50.00	15.00	15.00	16.25
Metro N. Y.—N. J. Whses.	30.44	26.76	34.12	— —	53.44	18.44	17.26	20.87†
Philadelphia	30.44	26.76	34.12	— —	53.44	18.44	17.26	20.87†
Boston	31.32	27.34	35.31	— —	54.32	19.32	17.84	22.06†
Buffalo	28.44	25.45	31.44	— —	51.44	16.44	15.95	18.19†
Detroit	29.00	25.81	32.19	— —	52.00	17.00	16.31	18.94†
East Chicago	29.32	26.02	32.62	— —	52.32	17.32	16.52	19.37†
Laramie	33.32	29.21	— —	— —	55.32	21.82	— —	— —†
Loveland	34.82	29.71	39.93	— —	57.82	22.32	— —	— —†

Prices shall apply to all shipments made on or after January 4, except only upon bona fide orders actually received and accepted by you at your home office in writing before January 4 and shipped by you within ten days after January 4, 1932.

Very truly yours,
UNITED STATES GYPSUM COMPANY
Vice President in Charge of Sales.

CFH'

10018 UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

OCTOBER 16, 1931.

Board License Bulletin No. 2—(Cancels Previous Bulletin No. 2)—Prices F.O.B. Trucks at Mills and Warehouses

DEAR SIRS: Referring to paragraph two of our license contract with you, you are hereby notified that the minimum prices effective immediately, at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent), including Haggerty number 1,500,452 and Hite patent number 1,230,297, are as follows:

Minimum Prices f.o.b. Trucks: Mills or Warehouses	3/8" Gypsum Wallboard (Wt. 1600 # per M)	1/4" Gypsum Wallboard (Wt. 1050 # per M)	1/2" Gypsum Wallboard (Wt. 2150 # per M)	3/4" Gypsum Wallboard (Wt. 3300 # per M)	3/8" Tiled Gypsum Wallbd. (Wt. 1600 # per M)	3/8" Gypsum Plasterboard (Wt. 1600 # per M)	1/4" Gypsum Plasterboard (Wt. 1050 # per M)	1/2" Gypsum Plasterboard (Wt. 2150 # per M)
Oakfield	27.00	24.50	29.50	— —	50.00	15.00	15.00	16.25
Plasterco	27.00	24.50	29.50	— —	50.00	15.00	15.00	16.25
Gypsum	27.00	24.50	29.50	35.00	50.00	15.00	15.00	16.25
Grand Rapids	27.00	24.50	29.50	— —	50.00	15.00	15.00	16.25
Fort Dodge	27.00	22.50	29.50	35.00	50.00	15.00	15.00	16.25†
Southard	27.00	24.50	28.00	35.00	50.00	15.00	15.00	16.25
Sweetwater	27.00	24.50	28.00	— —	50.00	15.00	15.00	16.25
Acme	27.00	24.50	28.00	— —	50.00	15.00	15.00	16.25
Metro N. Y.-N. J. Whses.	30.12	26.55	33.69	— —	53.12	18.12	17.05	20.44†
Philadelphia	30.12	26.55	33.69	— —	53.12	18.12	17.05	20.44†
Boston	31.00	27.13	34.88	— —	54.00	19.00	17.63	21.63†
Buffalo	28.28	25.34	31.22	— —	51.28	16.28	15.84	17.97†
Detroit	28.84	25.71	31.97	— —	51.84	16.84	16.21	18.72†
East Chicago	29.08	25.87	32.30	— —	52.08	17.08	16.37	19.05†
Laramie	33.00	27.00	— —	— —	55.00	21.50	— —	— —†
Loveland	34.50	27.50	39.50	— —	57.50	22.00	— —	— —†

Prices shall apply to all shipments made after receipt of this notice except only upon bona fide orders actually received and accepted by you at your home office in writing before receipt hereof and shipped by you within ten days after receipt of this notice.

Very truly yours,
UNITED STATES GYPSUM COMPANY
Vice President in Charge of Sales.

† Indicates changes in this reissue.

10019 UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

MAY 25, 1931.

Board License Bulletin No. 2—(Cancels Previous Bulletin No. 2)—Prices F.O.B. Trucks at Mills and Warehouses

DEAR SIRS: Referring to paragraph two of our license contract with you, you are hereby notified that the minimum prices effective June 1st, 1931, at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent), including Haggerty number 1,500,452 and Hite patent number 1,230,297, are as follows:

Minimum Prices f.o.b. Trucks: Mills or Warehouses	3/8" Gypsum Wallboard (Wt. 1600# per M) †	1/4" Gypsum Wallboard (Wt. 1050# per M) †	1/2" Gypsum Wallboard (Wt. 2150# per M) †	3/4" Gypsum Wallboard (Wt. 3300# per M) †	3/8" Tiled Gypsum Wallbd. (Wt. 1600# per M) †	3/8" Gypsum Plasterboard (Wt. 1600# per M) †	1/4" Gypsum Plasterboard (Wt. 1050# per M) †	1/2" Gypsum Plasterboard (Wt. 2150# per M) †
Oakfield	27.00	24.50	29.50	— —	50.00	15.00	15.00	16.25
Plasterco	27.00	24.50	29.50	— —	50.00	15.00	15.00	16.25
Gypsum	27.00	24.50	29.50	35.00	50.00	15.00	15.00	16.25†
Grand Rapids	27.00	24.50	29.50	— —	50.00	15.00	15.00	16.25†
Fort Dodge	27.00	24.50	29.50	35.00	50.00	15.00	15.00	16.25†
Southard	27.00	24.50	28.00	35.00	50.00	15.00	15.00	16.25†
Sweetwater	27.00	24.50	28.00	— —	50.00	15.00	15.00	16.25†
Acme	27.00	24.50	28.00	— —	50.00	15.00	15.00	16.25†
Metro N. Y.-N.J. Whses.	30.12	26.55	33.69	— —	53.12	18.12	18.12	20.44†
Philadelphia	30.12	26.55	33.69	— —	53.12	18.12	18.12	20.44†
Boston	31.00	27.13	34.88	— —	54.00	19.00	19.00	21.63†
Buffalo	28.28	25.34	31.22	— —	51.28	16.28	16.28	17.97†
Detroit	28.84	25.71	31.97	— —	51.84	16.84	16.84	18.72†
East Chicago	29.08	25.87	32.30	— —	52.08	17.08	17.08	19.05†
Laramie	33.00	29.00	— —	— —	55.00	21.50	— —	— —
Loveland	34.50	29.50	39.50	— —	57.50	22.00	— —	— —

Prices shall apply to all loadings made after June 1st except only upon bona fide orders actually received and accepted by you at your home office in writing before June 1st and loaded by you within ten days after June 1st.

Very truly yours,

UNITED STATES GYPSUM COMPANY
Vice President in Charge of Sales.

CFH'

10020 UNITED STATES GYPSUM COMPANY
300 West Adams Street
CHICAGO

MARCH 21, 1931

Board License Bulletin No. 2—Prices F.O.B. Trucks at Mills or Warehouses

American A R Black (John A. Kling, Pres.)

Universal Eugene Holland

Certainteed C.O. Brown (cc—Warren Henley)

Atlantic W. P. Fuller (cc—L.I. Neale)

Ebsary Geo. N. Lenci (cc—Fred Ebsary)

National M. N. Baker

Kelley Plas. Bd. Co. S.J. Kelley

DEAR SIRS: Referring to paragraph two of our license contract with you, you are hereby notified that the minimum prices now in effect at which you may sell gypsum wallboard and gypsum plasterboard manufactured by you and embodying the inventions and improvements set forth and claimed in our patents under which you are licensed (not including applications for letters patent), including Haggerty patent number 1,500,452 and Hite patent number 1,230,297, are as follows:

Minimum Prices f.o.b. Trucks:	3/8" Gypsum Wallboard (Wt. 1850# per M)	1/4" Gypsum Wallboard (Wt. 1250# per M)	1/2" Gypsum Wallboard (Wt. 2250# per M)	3/4" Gypsum Wallboard (Wt. 3600# per M)	3/8" Tiled Gypsum Wallbd. (Wt. 1850# per M)	3/8" Gypsum Plasterboard (Wt. 1850# per M)	1/4" Gypsum Plasterboard (Wt. 1250# per M)	1/3" Gypsum Plasterboard (Wt. 2250# per M)
Oakfield	27.00	24.50	29.50	— —	50.00	15.00	15.00	16.25
Plâstereo	27.00	24.50	29.50	— —	50.00	15.00	15.00	16.25
Gypsum	28.00	25.50	30.50	36.00	51.00	16.00	16.00	17.25
Grand Rapids	28.00	25.50	30.50	— —	51.00	16.00	16.00	17.25
Ft. Dodge	27.00	24.50	29.50	35.00	50.00	15.50	15.50	16.25
Southard	27.00	24.50	28.00	35.00	50.00	15.50	15.50	16.25
Sweetwater	28.00	25.50	29.00	— —	51.00	16.50	16.50	17.25
Acme	27.00	24.50	28.00	— —	50.00	15.50	15.50	16.25
Harrison, N. J.	32.61	28.94	35.89	— —	55.61	19.61	19.61	21.64
New Brighton, N. Y.	32.61	28.94	35.89	— —	55.61	19.61	19.61	21.64
Bronx (Port Morris)	32.61	28.94	35.89	— —	55.61	19.61	19.61	21.64
Philadelphia	32.61	28.94	35.89	— —	55.61	19.61	19.61	21.64
Boston	33.63	29.63	37.13	— —	56.63	20.63	20.63	22.88
Buffalo	28.48	25.50	31.30	— —	51.48	16.48	16.48	— —
Detroit	30.13	26.94	33.09	— —	53.13	18.13	18.13	19.84
E. Chicago	30.41	27.13	33.43	— —	53.41	18.41	18.41	20.18
Laramie	33.00	29.00	— —	— —	55.00	21.50	— —	— —
Loveland	34.50	29.50	39.50	— —	57.50	22.00	— —	— —

10021 Board /License Bulletin Number 2

Prices shall apply to all loadings made after receipt of this notice except only upon bona fide orders actually received and accepted by you at your home office in writing before receipt hereof and shipped by you within ten days after receipt of this notice.

This bulletin cancels all previous bulletins.

Very truly yours,

UNITED STATES GYPSUM COMPANY

Vice-President in Charge Sales

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